

compare NRCs resulting from minimum, maximum, average and mode reported work times.²⁹¹ After reviewing this comparison, as well as a separate comparison of these NRCs to the NRCs that had been recently adopted in New York and New Jersey, the Delaware Commission ordered Verizon to use the lower of NRCs computed using average or mean work times, or NRCs computed using mode, or most frequently reported, work times.²⁹² Because Verizon could not demonstrate that all tasks required to expedite orders were performed outside of normal work hours, the Delaware Commission ordered Verizon to eliminate its expedite charge.²⁹³ Reasoning that competitive LECs should not be required to pay disconnect charges “up front” when ordering service for a new customer, the Delaware Commission ordered Verizon to disaggregate connect and disconnect charges.²⁹⁴ Finally, the Delaware Commission adopted an interim, promotional \$35 hot cut rate that had been stipulated by the parties to the New York rate proceeding and recently adopted in New Jersey.²⁹⁵ In addition to these specific adjustments, as discussed *supra*, the Delaware Commission also ordered Verizon to reduce the common cost factor it applied to its NRCs from 10 percent to 5.95 percent.²⁹⁶ As it took these steps, the Delaware Commission was constantly aware that it needed to comply with a district court remand requiring it to compile and weigh additional evidence on whether Verizon’s NRCs were appropriately forward-looking.²⁹⁷

85. Verizon defends its non-recurring cost model, stating that the model has been “thoroughly revised” from the model underlying the NRCs remanded by the Delaware district court and is the same model used to produce NRCs subsequently adopted by the New York Commission and the New Jersey Board.²⁹⁸ Verizon specifies that it has gained substantially more experience in determining the tasks required to provision UNEs than it had in 1996 when it computed the NRCs remanded by the district court.²⁹⁹ Verizon adds that both the New York Commission and the New Jersey Board subjected its new non-recurring cost model to intense scrutiny during their rate proceedings and concluded that the model could produce TELRIC

²⁹¹ *Id.* at 33.

²⁹² *Id.* at 34-35.

²⁹³ *Id.* at 39.

²⁹⁴ *Id.* at 37-38.

²⁹⁵ *Id.* at 35-36.

²⁹⁶ *Id.* at 34.

²⁹⁷ Delaware PSC, *Application of Verizon Delaware Inc. (F/K/A Bell Atlantic-Delaware, Inc.), for approval of its Statement of Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Phase II*, Docket No. 96-324, Public Meeting Transcript at 2404, 2435 (Apr. 30, 2002).

²⁹⁸ Verizon Reply at 27, 29; Verizon Martin/Garzillo/Sanford Reply Decl. at 17, para 34.

²⁹⁹ Verizon Martin/Garzillo/Sanford Reply Decl. at 20-21, para. 39.

compliant NRCs.³⁰⁰ Finally, Verizon notes that both the Commission and another district court have approved the “approach” of using existing processes as a starting point and modifying these processes to reflect improved technology and efficiency.³⁰¹

86. We conclude that, based on the record before it, the Delaware Commission made reasonable adjustments to Verizon’s non-recurring cost model that produced NRCs that fall within the reasonable range that TELRIC principles would produce. First, the Delaware Commission fully considered the detailed, fact-intensive evidence regarding NRCs compiled in the lengthy Phase II proceedings, AT&T’s criticisms of Verizon’s model, and the concerns of its staff regarding Verizon’s model. Based on these factors, the Delaware Commission made major adjustments to the model that resulted in steep reductions to certain NRCs. For example, when Verizon used mode rather than mean work times to compute NRCs, as ordered by the Delaware Commission, the initial, two-wire loop connection charge dropped from \$42.68 to \$28.02.³⁰² When Verizon filed a new feature change charge to correct its inadvertent failure to use the shorter work times mandated by the Delaware Commission, the charge dropped from \$9.01 to \$5.98.³⁰³ We thus find AT&T’s characterization of the Delaware Commission’s actions as “arbitrary” to be incorrect, and its claims that the Delaware Commission intended to adopt only interim NRCs and failed to address the flaws in Verizon’s cost model to be unsupported by the record.³⁰⁴ Rather, the Delaware Commission specifically addressed the alleged flaws in Verizon’s model. It made reasoned adjustments to the inputs to the model, carefully considered the effects of those adjustments on NRCs produced by the model, and compared the resulting NRCs to those adopted in New York and New Jersey.

87. The Delaware Commission’s careful comparison of Verizon’s Delaware NRCs to New York and New Jersey NRCs provides us added confidence in our conclusion. We have accorded substantial deference to the painstaking work of the New York Commission in considering prior section 271 applications,³⁰⁵ and recently determined that Verizon’s New Jersey

³⁰⁰ *Id.* at 17-19, para. 35.

³⁰¹ Verizon Reply at 29, citing *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9039-40, para. 36; *AT&T Communications of South Central States, Inc. v. BellSouth Telecommunications Inc.*, 20 F. Supp 2d 1097, 1101 (E.D. Ky. 1998); *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 40 F. Supp. 2d 416, 421-22 (E.D. Ky. 1998).

³⁰² Letter from Richard T. Ellis, Director, Federal Regulatory, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-157 (filed July 25, 2002 (Verizon July 25 *Ex Parte* Letter)).

³⁰³ Verizon Aug. 12 *Ex Parte* Letter.

³⁰⁴ AT&T Reply, Declaration of Richard J. Walsh on Behalf of AT&T Corp. at 8, para. 17, 4-5, para. 8 (AT&T Walsh Reply Decl.).

³⁰⁵ *Bell Atlantic New York Order*, 15 FCC Rcd at 4082, para. 240, 4084-84, paras. 245, 247, *aff’d*, *AT&T Corp. v. FCC*, 220 F. 3d 607 (D.C. Cir. 2000); *Verizon Rhode Island Order*, 17 FCC Rcd at 3325-26, paras. 50, 52.

NRCs satisfy checklist item two.³⁰⁶ The Delaware Commission compared Verizon's various Delaware NRC computations using minimum, maximum, average and mean work times to comparable New York and New Jersey NRCs, and, adopted NRCs that it found to be comparable to New York and New Jersey NRCs.³⁰⁷

88. We now turn to AT&T's specific criticisms of Verizon's Delaware NRCs for feature changes, field installation, disconnects, and hot cuts. First, we point out that AT&T did not raise many of these criticisms to the Delaware Commission, and, therefore, the state has not had the first opportunity to address many of AT&T's arguments in its deliberations. As we have said previously:

When a party raises a challenge related to a pricing issue for the first time in the Commission's section 271 proceedings without showing why it was not possible to raise it before the state commission, we may exercise our discretion to give this challenge little weight. In such cases, we will not find that the objecting party persuasively rebuts the *prima facie* showing of TELRIC compliance if the BOC provides a reasonable explanation concerning the issue raised by the objecting party.³⁰⁸

89. With this standard in mind, we discuss in turn our conclusions that AT&T fails to demonstrate clear TELRIC error for each NRC that it attacks. With respect to Verizon's feature change charge, AT&T attacks Verizon's incorrect, \$9.01 feature change charge rather than Verizon's corrected feature change charge of \$5.98. Presumably, because the AT&T non-recurring cost model rejected by the Delaware Commission produces a feature change charge of \$0.27, AT&T would still object to the corrected, \$5.98 charge.³⁰⁹ We decline to find that the Delaware Commission committed clear error in adopting this \$5.98 charge for the same reasons that we declined to find that the New Jersey Board committed clear error in adopting a \$7.01 feature change charge.³¹⁰ While we agree that there is a material difference between Verizon's service initiation charge of \$0.28 and its feature change charge of \$5.98, this comparison alone

³⁰⁶ *Verizon New Jersey Order*, 17 FCC Rcd at 12304, 12307, paras. 67, 73.

³⁰⁷ *Verizon July 25 Ex Parte Letter*.

³⁰⁸ See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, Memorandum Opinion and Order, WC Docket No. 02-150 (rel. Sept. 18, 2002) (*BellSouth Multistate Order*) at 32. See also *Verizon New Jersey Order*, 17 FCC Rcd at 12307, para. 72.

³⁰⁹ AT&T Walsh Decl. at para. 40.

³¹⁰ *Verizon New Jersey Order*, 17 FCC Rcd at 12306, para. 70. We note, however, that the New Jersey Board recently reduced Verizon's New Jersey feature change charge. See AT&T Walsh Reply Decl. at para. 24. The Delaware Commission may want to consider this reduction in any future review of the Delaware feature change charge.

does not demonstrate that Verizon used incorrect inputs in computing the charge.³¹¹ Further, unlike some other NRCs such as hot cuts, competitive LECs pay the feature change charge only for their existing customers, and, therefore, the charge does not constitute a barrier to a competitive LEC's acquisition of a new customer.³¹²

90. With respect to Verizon's Delaware field installation NRC, AT&T contends that field installation costs should be recovered through recurring loop rates rather than non-recurring rates.³¹³ AT&T points to recent decisions by the Massachusetts Department of Telecommunications and Energy and a Pennsylvania Public Utility Commission Administrative Law Judge that appear to accept AT&T's argument that field installation costs are recurring rather than non-recurring.³¹⁴ To defend its field installation charge, Verizon points to New York Commission and New Jersey Board decisions to recover field installation costs through NRCs.³¹⁵ Our rules specifically address a state's discretion to recover non-recurring costs through recurring charges. While it is prohibited to recover recurring costs through non-recurring charges, our rules provide the state with discretion to recover non-recurring costs through either recurring or non-recurring charges.³¹⁶ Accordingly, AT&T would have to demonstrate that field installation costs are recurring costs to establish that the Delaware Commission made a TELRIC error in setting a non-recurring charge to recover such costs. AT&T has not done so and we find no TELRIC error.

91. With respect to Verizon's Delaware hot cut rate of \$35, we reject AT&T's claims that the rate is not TELRIC compliant. As noted above, the Delaware Commission adopted the same, promotional, hot cut rate that had been stipulated by parties to the New York rate proceeding and subsequently adopted by the New Jersey Board. After reviewing the background of the New York stipulation, the Delaware Commission concluded that precise hot cut costs were impossible to determine because Verizon and competitive LECs were still in the process of determining the tasks required to perform a hot cut and the resulting costs. Therefore, the Delaware Commission concluded: "The Commission believes that adopting a \$35 promotional

³¹¹ *Verizon New Jersey Order*, 17 FCC Rcd at 12306, para. 70.

³¹² *Id.* at 12306-07, para. 71.

³¹³ AT&T Walsh Decl. at paras. 52-52; Letter from David Levy, counsel to AT&T to Marlene H. Dortch, Secretary, Federal Communications Commission at Attach., Supplemental Declaration of Richard J. Walsh on Behalf of AT&T Corp., WC Docket No. 02-157 (filed Aug. 6, 2002) (*AT&T Supplemental Walsh Decl.*); AT&T Walsh Reply Decl. at paras 13-21. AT&T also asserts that Verizon double recovers its field installation charges in its recurring loop rates and field installation NRC. AT&T Comments at 33; AT&T Walsh Decl. at para. 50. Verizon disputes this claim and AT&T provides no evidence or analysis in support of its contention. Verizon Reply at 32; Verizon Martin/Garzillo/Sanford Reply Decl. at 28-29, paras. 54-55. Accordingly, we reject AT&T's claim.

³¹⁴ AT&T Walsh Decl. at paras. 57-61; AT&T Walsh Supplemental Decl. at paras. 24-26.

³¹⁵ Verizon Martin/Garzillo/Sanford Reply Decl. at 28-29, paras. 54-55.

³¹⁶ 47 CFR § 51.507(d), (e).

hot cut rate for a two-year period will afford the members of the industry time to resolve their differences over this process, and will give both sides the incentive to come together and discuss this problem.”³¹⁷ We find this action reasonable. Further, as we stated in the *Verizon New Jersey Order*, “the \$35 hot cut rate, which mirrors the effective rate in New York, bears the imprimatur of the New York PSC as well as the numerous competitive LECs who joined that settlement, including AT&T itself.”³¹⁸ Therefore, we conclude that AT&T has failed to demonstrate that the Delaware Commission committed clear error in adopting the \$35 hot cut rate.

92. Finally, AT&T protests Verizon’s \$2.99 disconnect charge, claiming that Verizon provides no evidence to support this “last minute” charge.³¹⁹ Verizon computed this charge because, in response to competitive LECs’ protests that they should not be required to pay disconnect charges “up front” when connecting new customers, the Delaware Commission ordered Verizon to separate disconnect and connection charges.³²⁰ We find this decision to be a reasonable response to the competitive LECs’ concerns. Verizon explains that it computed the charge by halving its basic service order charge of \$5.98 and deducting this amount from the related connection charges, assuming that disconnect orders would take less time to process than connection orders.³²¹ AT&T presents no evidence to indicate that this method does not derive a cost-based rate. Therefore, we conclude that there is insufficient basis for us to find that the Delaware Commission’s adoption of Verizon’s \$2.99 disconnect charge constitutes clear TELRIC error.

93. For all of these reasons, we conclude that Verizon’s Delaware NRCs fall within the range that reasonable application of TELRIC principles would produce, and that they satisfy checklist item two.

94. *Price Squeeze.* AT&T and WorldCom argue that residential competition is not economically viable in portions of Delaware because of the narrow margins available to competitors that provide service through the UNE platform. AT&T and WorldCom both argue that this price squeeze is a violation of the requirement that granting of section 271 applications be in the public interest, and AT&T additionally argues that the price squeeze violates the nondiscriminatory pricing requirement in checklist item two. We disagree. Section 252 of the Act requires that UNEs be priced on the basis of cost, and our analysis of Verizon’s Delaware UNE rates determined that these rates are cost-based. The potential revenues that can be generated from purchasing UNEs, and the resulting margin, are irrelevant to the determination of

³¹⁷ *Phase II UNE Rate Order* at 36.

³¹⁸ *Verizon New Jersey Order*, 17 FCC Rcd at 12303-02, para. 66.

³¹⁹ AT&T Walsh Decl. at para. 39.

³²⁰ *Phase II UNE Rate Order* at 37-38.

³²¹ Verizon Martin/Garzillo/Sanford Reply Decl. at 33-34, para. 66.

whether rates are cost-based in compliance with checklist item two.³²² Therefore, we address AT&T's and WorldCom's price squeeze claims in the public interest section.³²³

4. Operations Support Systems

95. Based on the evidence in the record, we find, as did the Delaware and New Hampshire Commissions,³²⁴ that Verizon provides nondiscriminatory access to its operations support systems (OSS) in Delaware and New Hampshire.³²⁵ As discussed below, however, based on our examination of the record, we note a few performance areas in New Hampshire involving minor discrepancies in performance data that require further consideration.³²⁶ We first discuss the relevance of Pennsylvania performance data to our analysis of Verizon's OSS in Delaware and the relevance of Massachusetts performance data to our analysis of Verizon's OSS in New

³²² *Sprint v. FCC*, 274 F.3d at 553.

³²³ See section VI.A., *infra*.

³²⁴ See Delaware Commission Comments at 13, 15-16; New Hampshire Commission Comments at 1-3, 11, 18. We note that the New Hampshire Commission set a number of conditions, which Verizon met to the New Hampshire Commission's satisfaction, regarding checklist item 2. However, none of these conditions pertained to OSS. See New Hampshire Commission Comments at 11-18.

³²⁵ See Verizon Application at 93-110; see generally Verizon Application Appen. A, Vol. 3, Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster Regarding New Hampshire and Delaware (Verizon DE-NH McLean/Wierzbicki/Webster Decl.) and Verizon Application Appen. A, Vol. 3, Joint Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster Regarding Delaware (Verizon DE McLean/Wierzbicki/Webster Decl.).

³²⁶ Verizon has missed only two key Delaware OSS performance measures more than twice in recent months: PO-1-5-6022 – average response time for inquiries regarding telephone number availability and reservation (EDI), and MR-1-01-6060 – response time to create a trouble report (electronic bonding). Deviation from the standard in PO-1-05-6022 has averaged 2.8 seconds, a minimal amount of time that appears to be of little or no competitive significance in this OSS function. The other OSS measurement with more than two misses, MR-1-01-6060, has been eliminated beginning with the July 2002 report, and this metric is no longer considered a meaningful gauge of incumbent performance. Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 02-157 (filed June 27, 2002) (Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter) at 2. See Verizon DE McLean/Wierzbicki/Webster Decl. and Verizon DE-NH McLean/Wierzbicki/Webster Decl. A new metric for evaluating Electronic Bonding to Create Trouble Tickets is currently under discussion in the Carrier-to-Carrier Working Group in New York. Once adopted in New York, it will be implemented in Delaware as well. In any event, no metric miss has been greater than six seconds. Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter at 2. As we have said before, we do not regard minimal and isolated failures to be of competitive significance. See *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, 16 FCC Rcd 8988, 9055-56, para. 122 (2001); *Verizon Vermont Order*, 17 FCC Rcd at 7652, para 49.

Hampshire. We then discuss three specific performance areas regarding Verizon's New Hampshire OSS: order processing notifiers, flow-through, and billing accuracy.³²⁷

a. Relevance of Verizon's Pennsylvania and Massachusetts OSS

96. Consistent with Commission precedent,³²⁸ Verizon's application relies on evidence concerning its OSS performance in Pennsylvania and Massachusetts.³²⁹ Verizon asserts that its OSS in Delaware are substantially the same as the OSS in Pennsylvania and that, therefore, evidence concerning OSS in Pennsylvania is relevant and should be considered in our evaluation of Verizon's OSS in Delaware.³³⁰ Similarly, Verizon asserts that its New Hampshire OSS are substantially the same as its Massachusetts OSS and that, therefore, evidence concerning its Massachusetts OSS is relevant and should be considered in our evaluation of Verizon's New Hampshire OSS.³³¹

97. In support of these claims, Verizon submits reports from Pricewaterhouse Coopers (PwC).³³² PwC evaluated Verizon's OSS (specifically the pre-order, order, provisioning, maintenance and repair, relationship management infrastructure, and billing domains) made available to support competitive LEC activity in Delaware and New Hampshire, in order to attest to Verizon's assertions that (1) its interfaces, systems, and procedures in these states are identical to those in their respective "anchor" states, Pennsylvania and Massachusetts, and (2) the personnel and work center facilities supporting Verizon's OSS use the same

³²⁷ We acknowledge that in New Hampshire, BayRing identifies alleged incidents of Verizon provisioning deficiencies, involving service disruptions and provisioning delays, which BayRing implies relate to checklist item 2. See BayRing Comments at viii, 45-51. BayRing generally argues that Verizon provides poor quality service by ignoring order dates, using inefficient provisioning processes, and failing to timely resolve problems. See BayRing Comments at 45-51. BayRing, however, fails to explain how these episodes – from one year ago – result in checklist noncompliance. In any event, as discussed above, commercial evidence of Verizon's performance for all competitive LECs for recent months demonstrates that Verizon meets checklist item 2. We discuss these episodes more fully in Section III.C. of this Order, concerning unbundled local loops. See Section III.C., *infra*.

³²⁸ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6284-85, paras. 104-05 (2001).

³²⁹ See Verizon DE McLean/Wierzbicki/Webster Decl. at para. 15; Verizon DE-NH McLean/Wierzbicki/Webster Decl. at para. 15.

³³⁰ See Verizon Application at 95-96; see also Verizon DE McLean/Wierzbicki/Webster Decl. at paras. 10-18.

³³¹ See Verizon Application at 93-94; see also Verizon DE-NH McLean/Wierzbicki/Webster Decl. at paras. 10-18.

³³² See Verizon Application Appen. B-DE, Tab 2, Joint Declaration of Russell Sapienza and William Cobourn, in *Inquiry into Verizon Delaware, Inc.'s Compliance with the Conditions Set forth in 47 U.S.C. § 271(c)*, Delaware Commission (filed Feb. 1, 2002) (DE PwC Report); Verizon Application Appen. B-NH, Tab 1, Joint Declaration of Russell Sapienza and Catherine Bluvol, in *Verizon New England Inc., d/b/a Verizon New Hampshire, Section 271 of the Telecommunications Act of 1996 Compliance Filing*, New Hampshire Commission (filed Aug. 31, 2001) (NH PwC Report).

procedures in Delaware and New Hampshire as in Pennsylvania and Massachusetts, respectively.³³³ Verizon also submits declaratory evidence that its “interfaces, gateway systems, and underlying OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing” serving Pennsylvania are also used for Delaware³³⁴ and those serving Massachusetts are also used for New Hampshire and the other New England states.³³⁵

98. We note that no commenter disputes the relevance of Verizon’s Pennsylvania and Massachusetts OSS to our inquiry in this proceeding. We find that Verizon, through the PwC Report and its declarations, provides evidence that its Pennsylvania and Massachusetts OSS are substantially the same as its Delaware and New Hampshire OSS, respectively. Therefore, evidence concerning Verizon’s OSS in Pennsylvania is relevant and should be considered in our evaluation of Verizon’s OSS in Delaware, and evidence concerning OSS in Massachusetts is relevant and should be considered in our evaluation of Verizon’s OSS in New Hampshire. Verizon’s showing enables us to rely on findings relating to OSS from the *Verizon Pennsylvania Order* and *Verizon Massachusetts Order* in our analysis of Verizon’s OSS in Delaware and New Hampshire. In addition, where low volumes in Delaware or New Hampshire yield inconclusive performance metrics results concerning Verizon’s compliance with the competitive checklist, we can examine data reflecting Verizon’s performance in Pennsylvania or Massachusetts, as appropriate, to inform our evaluation of checklist compliance.³³⁶

b. Order Processing Notifiers

99. We find that Verizon’s ordering notifiers generally demonstrate nondiscriminatory access to OSS in New Hampshire. The Commission, in prior section 271 orders, has held that functionality encompassed by order confirmation notices is an important element of the ordering process, and that data demonstrating that such notices are provided in a timely manner is a key consideration for assessing whether competitors are allowed a meaningful opportunity to compete.³³⁷ In processing an order, Verizon’s systems progressively generate four principal sets of notifiers that track the status of the order: (1) an acknowledgement that the order has been received (ACK) or negative acknowledgement (NACK), which indicates flawed transmission of the order and inability to process it; (2) an LSRC or order rejection notice; (3) a provisioning completion notifier (PCN), which informs a carrier of the completion of the work associated with an order,³³⁸ or a “jeopardy” notice that a service installation due date will be

³³³ See DE PwC Report at paras. 9-13; NH PwC Report at paras. 7-13.

³³⁴ Verizon DE McLean/Wierzbicki/Webster Decl. at para. 10-11; see also DE PwC Report at paras. 9-13.

³³⁵ Verizon DE-NH McLean/Wierzbicki/Webster Decl. at para. 10-11; see also NH PwC Report at paras. 7-13.

³³⁶ Where there is sufficient volume we rely primarily on performance in the subject state rather than the anchor state. See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6253-55, paras. 34-38.

³³⁷ See, e.g., *Bell Atlantic New York*, 15 FCC Rcd 3953, 4035-37, paras. 163-64.

³³⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4053, para. 188.

missed;³³⁹ and (4) a billing completion notice (BCN), which informs competitors that all provisioning and billing activities necessary to migrate an end user from one carrier to another are complete and thus the competitor can begin to bill the customer for service.³⁴⁰

100. We note that in New Hampshire, during the relevant period, Verizon missed the 95 percent standard for sending completion notifiers for provisioned resale and UNE orders within one day (an aggregated measurement).³⁴¹ Under this metric, the PCN is considered timely when Verizon provides the notifier within one business day of the listed work order completion date.³⁴² Verizon contends that because a disproportionate number of competitors' orders involve physical work, requiring dispatch of a technician, it is difficult to complete the work, register completion of the work, and update the "Service Order Processor" all in one day.³⁴³ Verizon further argues that if it had reported its New Hampshire performance as it did in the *Verizon New Jersey 271 Application* and other section 271 applications, it would have met the 95 percent benchmark.³⁴⁴

101. In evaluating the disparity between Verizon's retail timeliness of completion notifiers and the state-approved benchmark, we consider several factors to assess the competitive significance of Verizon's performance. First, we note that Verizon's one-day completion rate for this metric has improved consistently in recent months, reaching 86.49 percent in June. Second, Verizon's performance on other measures of order completion notifiers has met the standards set by the New Hampshire Commission.³⁴⁵ Finally, we note that no commenting party – including the New Hampshire Commission – has raised any objection to Verizon's performance in sending timely completion notifiers. Therefore, we find that the relatively low figures reported by Verizon on this single metric do not warrant a finding of checklist noncompliance. Nonetheless, we expect Verizon to continue to improve on its one-day timeliness for this metric, consistent with the standards approved by the New Hampshire Commission. Moreover, we direct the

³³⁹ *SWBT Texas Order*, 15 FCC Rcd 18354, 18447, para. 184.

³⁴⁰ *Verizon Pennsylvania Order*, 16 FCC Rcd 17419, 17446, para. 43.

³⁴¹ See OR-4-16-2000 (Resale) and OR-4-16-3000 (UNE) (% Provisioning Completion Notifiers Sent Within 1 Business Day) (This metric was under development in February). Performance in subsequent months is as follows: 50.75% in March, 71.26% in April, 79.59% in May, and 86.49% in June.

³⁴² Verizon Application Appen. E, Vol. 4, Tab 19, State of New Hampshire Carrier-to-Carrier Guidelines Performance Standards and Reports, Verizon Reports, June 3, 2002, at 36.

³⁴³ The update by the technician of the Service Order Processor triggers the gateway system to generate the PCN. For the observations that missed this performance objective, Verizon states the PCN was in fact timely distributed once the Service Order Processor was updated. Moreover, Verizon implies that the higher percentage of loop orders compared to less technical UNE-P and resale orders in New Hampshire contributes to the delay. Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter at 4.

³⁴⁴ Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter at 4.

³⁴⁵ See OR-4-11-2000 and OR-4-11-3000, as well as OR-4-17-2000 and OR-4-17-3000.

Enforcement Bureau's Section 271 Compliance Team to monitor Verizon's order confirmation process in New Hampshire, and specifically its performance under that process. If we discover problems with the order confirmation process that undermine Verizon's ongoing compliance with this checklist item, we will not hesitate to take action pursuant to section 271(d)(6).

c. Flow-Through

102. As in prior section 271 orders, we do not examine Verizon's flow-through measures in isolation but in conjunction with other factors to assess Verizon's overall ability to provide competitors access to its ordering functions in a nondiscriminatory manner.³⁴⁶ Although Verizon has missed the standard benchmark for flow-through for resale POTS for three out the past five months,³⁴⁷ Verizon's performance has been above 90 percent for most months in this period and has shown a generally improving trend.³⁴⁸ In addition, Verizon exceeded the benchmark during the two most recent reported months,³⁴⁹ and during March 2002 – when the standard was 92 percent³⁵⁰ – Verizon missed the benchmark by only 0.09 percent. We also note that Verizon has met the benchmark for flow-through for UNEs during four out of the past five months, the sole miss occurring in February, the earliest relevant month.³⁵¹ In addition, Verizon has met the benchmark standard during relevant months for this measurement in Massachusetts, where volumes are considerably higher than in New Hampshire.³⁵² Finally, KPMG has attested that “Verizon's systems are capable of flowing through the order scenarios that are designed to flow through.”³⁵³ Because Verizon's performance on flow-through for resale POTS has been steadily improving, and because these problems appear anomalous to Verizon's overall flow-

³⁴⁶ See *Verizon New Jersey Order*, 17 FCC Rcd at 12338-39, para. 130.

³⁴⁷ See OR-5-03-2000 (Resale) (89.31% in February, 91.91% in March, 90.69% in April, 93.49% in May, and 94.30% in June).

³⁴⁸ See DE-NH Verizon McLean/Wierzbicki/Webster Decl. at para. 60.

³⁴⁹ Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter at 3.

³⁵⁰ Verizon explains that the standard for this metric “is subject to a “ramp up” period and that the benchmark in the second quarter of 2002 was 93 percent.” Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter at 3. At that time, the standard rose from 92 percent, which was the standard for the first quarter of 2002. Eventually, the standard will be 95 percent. See Verizon Application Appen. E, Vol. 4, Tab 19, State of New Hampshire Carrier-to-Carrier Guidelines Performance Standards and Reports, Verizon Reports, June 3, 2002, at 37.

³⁵¹ See OR-5-03-3000 (UNE) (94.44% in February, 95.22% in March, 95.50% in April, 95.95% in May, and 96.84% in June).

³⁵² Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket. 02-157 (filed June 27, 2002) (*Verizon NH-DE Aug. 2 Carrier to Carrier Performance Study and Reports Summary*).

³⁵³ Verizon DE-NH McLean/Wierzbicki/Webster Decl. at para. 60.

through performance, we find that Verizon's overall performance on flow-through supports our conclusion that Verizon provides competitors with nondiscriminatory access to OSS.

d. Billing Accuracy

103. We conclude that Verizon provides nondiscriminatory access to the functionality of its billing system in New Hampshire. According to performance measures in New Hampshire, Verizon delivers accurate bills in a timely manner to its competitors. We note, however, that Verizon's performance resolving billing disputes shows below-benchmark performance during February, March, and June 2002.³⁵⁴ Verizon argues that during February and March 2002, it was handling current claims and also resolving a backlog of older claims.³⁵⁵ Because the metric reports billing claims in the month they are resolved, Verizon contends that the resolution of these older claims results in an inaccurate picture of Verizon's performance for February and March.³⁵⁶ Regarding its June performance, Verizon shows that it resolved forty varying claims from a single competitive LEC, but that the metric counts each of these claims individually, bringing the June results below the benchmark.³⁵⁷ Verizon also demonstrates that currently no claims have been open longer than thirty days.³⁵⁸ We note that competitors have filed relatively few billing claims in New Hampshire,³⁵⁹ and no commenter has raised issues relating to Verizon's performance in this regard. In addition, Verizon reached 100 percent on-time performance resolving claims in April and May. For these reasons, we find that the relatively low figures reported by Verizon for February, March, and June 2002 on this single metric do not warrant a finding of checklist noncompliance.

C. Checklist Item 4 – Unbundled Local Loops

104. Section 271(c)(2)(B)(iv) of the Act requires a BOC to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."³⁶⁰ Based on the evidence in the record, we conclude, as did the Delaware and

³⁵⁴ See BI-3-05-2030 (Percent of competitor claims resolved within 28 days), where the standard is 95 percent (60% in February, 92.59% in March, 100% in April, 100% in May, and 57.69% in June).

³⁵⁵ Verizon DE-NH Aug. 9 OSS *Ex Parte* Letter at 5.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ See BI-2-01-2030 (Timeliness of Carrier Bill) and BI-3-04-2030 (% Competitive LEC Billing Claims Acknowledged within 2 business days.)

³⁶⁰ 47 U.S.C. § 271(c)(2)(B)(iv); *see also* Appen. F at paras. 48-52 (regarding requirements under checklist item 4).

New Hampshire Commissions, that Verizon provides unbundled local loops in accordance with the statutory requirements pertaining to checklist item 4.

105. Our conclusion that Verizon complies with checklist item 4 is based on our review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, digital loops, and high capacity loops, as well as our review of Verizon's processes for hot cuts, line sharing, and line splitting. As of March 31, 2002, competitors providing service in Delaware have acquired and placed into use approximately 23,500 unbundled loops from Verizon (including loops provided as part of UNE-P and xDSL-capable loops).³⁶¹ As of the end of March 2002, competitors providing service in New Hampshire have acquired and placed into use approximately 40,000 stand-alone loops from Verizon (including xDSL-capable loops).³⁶²

106. Consistent with prior section 271 orders, we do not address every aspect of Verizon's loop performance where our review of the record satisfies us that Verizon's performance is in compliance with the parity and benchmark measures established in Delaware and New Hampshire.³⁶³ Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Verizon and its competitors. In analyzing Verizon's compliance with this checklist item, we note that order volumes with respect to specific performance measures may be too low to provide a meaningful result. In these cases, because Verizon uses the same processes and procedures for provisioning, maintenance, and repair of unbundled local loops in Delaware as it does in Pennsylvania, and in New Hampshire as it does in Massachusetts, we look to Verizon's performance in Pennsylvania and Massachusetts, respectively, to assist our analysis.³⁶⁴

107. Based on the evidence in the record, we find that Verizon demonstrates that it provides xDSL-capable loops, digital loops, voice grade loops, high capacity loops, and hot cuts, in both states, in accordance with the statutory requirements pertaining to checklist item 4.³⁶⁵ In

³⁶¹ See Verizon Application at 26-28; Appen. A, Vol. 2, Tab B, Declaration of Paul A. Lacouture and Virginia P. Rueterholz (Verizon DE Lacouture/Rueterholz Decl.) at para. 82. Through March 2002, Verizon provisioned more than 23,500 loops -- about 20,300 stand-alone loops (including 18,500 POTS loops, 720 DSL loops, 650 high-capacity DS-1 loops, and 33 two-wire digital loops); 3200 loops provided as part of network element platforms that include switching and transport elements; and had provisioned about 50 line-sharing arrangements for unaffiliated competitive LECs. Verizon also provides line splitting in the same manner as in its 271-approved states. See Verizon Application at 26-28, 32, 38, 43, 45, and 47; see also Verizon DE Lacouture/Rueterholz Decl. at paras. 82, 84, 116, 135, 154, 176, and 190.

³⁶² Verizon NH Lacouture/Rueterholz Decl. at para. 86.

³⁶³ See, e.g., *Verizon Maine Order*, 17 FCC Rcd 11659, at para. 45 n. 190; *Verizon Connecticut Order*, 16 FCC Rcd 14147, 14151-52, para. 9.

³⁶⁴ See Verizon DE Lacouture/Rueterholz Decl. at para. 79; Verizon NH Lacouture/Rueterholz Decl. at para. 83.

³⁶⁵ See generally Appendices B, D, and F.

Delaware, commenters have not raised any issues with respect to any aspect of Verizon's loop performance under checklist item 4, and in New Hampshire, only one party, BayRing, filed comments concerning Verizon's loop performance.³⁶⁶ We address isolated performance disparities associated with these loop types, as well as BayRing's allegations with regard to high capacity loops and dark fiber, below.

108. *Voice Grade Loops.* We conclude that Verizon provides nondiscriminatory access to its provisioning processes for voice grade loops in Delaware. We note that voice grade loops comprise the overwhelming majority of loops ordered by competitive LECs in Delaware. Verizon states that, as of March 2002, it has provided competing carriers in Delaware with 18,500 voice-grade (*i.e.*, POTs) loops on a stand alone basis.³⁶⁷

109. We find that Verizon has met the relevant parity standard throughout the relevant 5-month period for provisioning timeliness of voice-grade loops.³⁶⁸ We recognize that Verizon's installation trouble measure for voice grade loops fails to meet parity performance for the relevant months.³⁶⁹ However, we do not believe that Verizon's performance on this metric necessarily indicates Verizon failed to provision quality voice grade loops. We note that the disparity between Verizon's performance for itself and competitive LECs is small, and that the overall Trouble Report Rate is low for both Verizon and competitive LECs.³⁷⁰ In addition, in past applications, we have found such small levels of disparity for this performance metric to not be competitively significant.³⁷¹ We note that no commenting party raised provisioning quality as an issue in Delaware.

110. We also find that Verizon provides maintenance and repair for loops in Delaware in a nondiscriminatory fashion. We note, however, that the repeat trouble report rate for unbundled loops was out of parity for four of the five relevant months.³⁷² However, consistent

³⁶⁶ See BayRing Comments at 29-51.

³⁶⁷ See *supra* n.360.

³⁶⁸ See PR 3-08-3142 (Pots Provisioning within 5 days – 1-5 lines – No Dispatch) and PR 3-09-3113 (Percent Completed in 5 days - 1-5 lines – Dispatch) for the months February through June, 2002.

³⁶⁹ See PR 6-01-3112 (Percent Installation Troubles Reported Within 30 Days -- Loop). Competitive LECs reported a higher percentage of lines installed where trouble was found within the first 30 days after loop installation, than did Verizon's retail operations. In Delaware, Verizon missed the parity standard for all relevant months except May.

³⁷⁰ See PR 6-01-3112 (Percent Installation Troubles Reported Within 30 Days -- Loop). For February, March, April, May, and June, Verizon's trouble report rates within 30 days were as follows: 1.78, 2.04, 1.95, 1.95 and 2.32 percent respectively. Competitive LEC's trouble report rates within 30 days for the same period were as follows: 5.2, 5.88, 4.55, N/A, and 5.33 percent respectively.

³⁷¹ See *Verizon Pennsylvania Order*, 16 FCC Rcd 17419, 17465-66, para. 85 n.294.

³⁷² For MR 5-01-3112 (Percent Repeat Reports Within 30 Days – Loop), Verizon missed parity in February, March, April, May and June 2002. The comparable numbers were 12.98%, 12.83%, 14.02%, 13.45%, and 13.85% (continued....)

with statements made in the Verizon Rhode Island and New Jersey section 271 applications, Verizon suggests that performance results under this metric may be skewed by the presence of misdirected dispatches, which result in overstated repeat troubles.³⁷³ Verizon also argues that this metric is flawed because it includes repeat trouble reports caused by the inability of Verizon to gain access to facilities at the competitive LEC customer premises.³⁷⁴ Verizon provides performance results for Delaware using the revised New York guidelines and urges us to rely on these results instead. Specifically, Verizon explains that the performance results under this metric when calculated under the New York guidelines met the standard for two out of three months.³⁷⁵ Consistent with our analysis in the *Verizon Rhode Island Order* and the *Verizon New Jersey Order*, we agree that the revised metric more accurately reflects Verizon's performance, and find that when Verizon's performance under this metric is recalculated to account for misdirected dispatches, the difference in performance provided to Verizon retail and competitive LECs is not competitively significant.³⁷⁶

111. *Hot Cut Activity.* Based on the record in this proceeding, we find that Verizon provides voice-grade loops through hotcuts in Delaware in accordance with the requirements of checklist item 4. We note that during February, March, and April, Verizon completed hot-cuts in Delaware within an average of 5.54 days, only marginally longer than the standard five-day interval for orders of one to ten lines.³⁷⁷ Verizon states that, on average, its performance for hot cuts in Delaware takes only about one-half day longer than the standard interval.³⁷⁸ We find this additional performance time appears to be sufficiently short as to not be competitively significant. Verizon also points out that the average completed interval measures, such as, the "hot cut loops, no dispatch" metric will no longer be reported in Delaware once Verizon begins

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for Verizon retail and 17.54%, 17.95%, 15.64%, 21.11%, and 19.76% for competitive LECs in February, March, April, May, and June, respectively.

³⁷³ See Verizon DE Lacouture/Ruesterholz Decl. at para. 99. Under the new guidelines, Verizon states that repeat trouble reports that resulted from a misdirected dispatch are excluded because CLECs are responsible for testing and directing Verizon to dispatch its repair technicians either 'in' (to the central office) or 'out' (to the outside plant).

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ See *Verizon New Jersey Order*, 17 FCC Rcd 12275, 12344 para. 141. Applying the business rules adopted in New York to the instant proceeding, the competitive LECs adjusted repeat trouble report rate from February to June would be approximately 16.96%, 17.10%, 14.69%, 17.22%, and 17.34%. See Verizon DE Lacouture/Ruesterholz Decl. at para. 99, Tab 9; Verizon DE Lacouture/Ruesterholz Reply Appen. A, Sec. B, Attach. 2.

³⁷⁷ See Verizon DE Lacouture/Ruesterholz Decl. at para. 112. See also PR 2-01-3111 (Average Completed Interval-Total No Dispatch – Hot Cut Loop).

³⁷⁸ Verizon DE Lacouture/Ruesterholz Decl. at para. 112. See also PR 2-01-3111 (Average Completed Interval-Total No Dispatch – Hot Cut Loop).

to report performance in Delaware under the New York guidelines.³⁷⁹ Verizon suggests that the percentage of hot cuts completed on the agreed-upon day and within the agreed-upon cut-over window would be a more accurate metric of hot cut provisioning of unbundled loops.³⁸⁰ We agree that the percentage of hot cuts completed on the agreed-upon day provides additional support for Verizon's hot cut performance in Delaware. Accordingly, we find that Verizon has satisfied the standard for on-time performance for hot cuts for the relevant five month period because the disparity between Verizon's overall hot cut performance and the five-day benchmark is not competitively significant in these circumstances.³⁸¹ No commenter raised any issues with respect to Verizon's hot cut process and performance in Delaware.

112. *High Capacity Loops.* We conclude, as did the Delaware and the New Hampshire Commissions, that Verizon demonstrates it provides high capacity loops in accordance with the requirements of section 271.³⁸² We note that BayRing contends that in New Hampshire Verizon's high capacity loop provisioning discriminates against competitive LECs in violation of the Act.³⁸³ Specifically, BayRing asserts that Verizon has implemented a "no facilities" policy, and that Verizon refuses to provide competitive LECs high capacity loops unless all necessary equipment and electronics are present on the customer's premises.³⁸⁴ Moreover, BayRing also states that, although the Commission previously addressed Verizon's "no facilities" policy in the *Verizon Pennsylvania Order*, the instant proceeding is the appropriate forum to address Verizon's allegedly discriminatory high capacity UNE provisioning policy.³⁸⁵

³⁷⁹ See Verizon DE Lacouture/Ruesterholz Decl. at para. 111; Verizon Guerard/Canny/Abesamis/DeVito Decl. at para. 66.

³⁸⁰ Verizon Guerard/Canny/Abesamis/DeVito Decl. at para. 72; Verizon points out that it provisions 98.45% of hot cuts on time in Delaware. See Verizon DE Lacouture/Ruesterholz Decl. at para. 109.

³⁸¹ See PR 9-01-3520 (Percent On Time Performance – Hot Cut).

³⁸² As stated above, Verizon met all key performance metrics in New Hampshire for the relevant period.

³⁸³ BayRing Comments at 37.

³⁸⁴ *Id.* As an example, BayRing cites Verizon's treatment of another competitive LEC operating in New Hampshire, Network Plus, for the period from July 2001 to December 2001. BayRing states that for the months leading up to and including July 2001, Verizon rejected about 6 percent of Network Plus's orders due to "no facilities." In August 2001, Verizon rejected more than six times as many Network Plus orders due to "no facilities" (about 39 percent). Between September 1, 2001, and December 14, 2001, Verizon rejected about 18% of the high capacity orders made by Network Plus. We note that the rejections BayRing describes occurred one year ago, and even if true, are outweighed by commercial data evidence of Verizon's compliance within the 5-month period that is relevant in the instant application. See BayRing Comments at 38-39, 41; BayRing Comments, Tab 3, Exh. 35, at para. 12 (Declaration of Lisa Korner Butler, Vice President Regulatory and Industry Affairs, Network Plus, Inc.).

³⁸⁵ BayRing Comments at 44-45. BayRing also argues that although high capacity loops represent only a small percentage of provisioned loops, access to such facilities is crucial to New Hampshire competitive LECs. BayRing further contends that, although Verizon is willing to construct DS-1 facilities pursuant to special access tariff, (continued...)

113. Verizon responds that its policy is to provide unbundled high capacity loops when all facilities, including central office and end-user equipment and electronics, are currently available.³⁸⁶ Further, when requisite electronics, such as line cards, have not been deployed but space exists in the multiplexers at the central office and end-user premises, Verizon will order and place the necessary line cards in order to provision the high capacity loop.³⁸⁷ Verizon will also perform the cross connection work between the multiplexers and the copper or fiber facility running to the end user.³⁸⁸ In the event that spare facilities and/or capacity on those facilities are unavailable, Verizon will not provide new facilities solely to complete a competitor's order for high-capacity loops.³⁸⁹ In those circumstances, Verizon will only provide a high-capacity facility pursuant to tariff.³⁹⁰

114. As Bayring points out, the Commission addressed this issue in the *Verizon Pennsylvania Order*.³⁹¹ Based on the limited information available to the Commission at that time, the Commission concluded that Verizon provided nondiscriminatory access to high capacity loops. The record in this proceeding remains just as sparse. Bayring does not provide any evidence based on its own experience. Instead, Bayring points to the experience of another competitive LEC dating from July to December 2001, a period well before the instant application. In addition, Bayring does not explain how Verizon's high capacity loop provisioning practices violate Bayring's interconnection agreement, the Act, or a Commission rule, or how Verizon's practice constitutes a systemic effort to deny CLECs access to unbundled high capacity loops. For these reasons, we conclude that Bayring has not rebutted Verizon's showing that it provides nondiscriminatory access to high capacity unbundled local loops. Our decision is in part based on Verizon's demonstrated performance provisioning some 40,000 unbundled local loops in New Hampshire. We stress that, pursuant to the Commission's rules, Verizon must provide unbundled high capacity loops on just, reasonable, and nondiscriminatory

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Verizon prices special access facilities significantly higher than UNEs. BayRing also complains that Verizon requires the competitive LEC to commit to a ninety (90) day minimum term and an early termination fee. BayRing Comments at 43-45. Verizon responds that, although it is not obligated to provide service under its special access tariffs, Verizon will construct such facilities pursuant to those tariffs if doing so does not conflict with current design practices and Verizon's construction program. Verizon DE-NH Lacouture/Ruesterholz Reply Decl. at para. 33.

³⁸⁶ Verizon will fill a competitive LEC's order where "there are already high capacity loop facilities in use serving a customer." Verizon DE-NH Lacouture/Ruesterholz Reply Decl. at para. 130.

³⁸⁷ *Id.*

³⁸⁸ *Id.* at paras. 130-31.

³⁸⁹ *Id.* at para. 129 and Attach. 17. Verizon argues that it "is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers." *Id.* at Attach. 17.

³⁹⁰ *Id.* at para. 129 and Attach. 17.

³⁹¹ *Verizon Pennsylvania Order*, 16 FCC Rcd 17469-70, paras. 91-92.

rates, terms and conditions. We are prepared to pursue appropriate enforcement action if evidence becomes available that Verizon is not fulfilling its obligations under the Act or the Commission's rules to provide nondiscriminatory access to unbundled high capacity local loops.³⁹²

115. *Digital Loops.* We find that Verizon's performance for competitive LECs is generally in parity with benchmarks established in Delaware. In fact, Verizon consistently met parity for the key ordering and provisioning loop metrics.³⁹³ We note that Verizon's Network Trouble Report Rate for digital loops was out of parity for several of the relevant months in Delaware.³⁹⁴ However, we find, as we did in the *Verizon Pennsylvania Order*, that this level of disparity is minor and therefore not competitively significant.³⁹⁵ Finally, we note that no commenter raises specific issues with respect to digital loops and that the volume of digital loops ordered by competitors remains relatively low.³⁹⁶

116. *BayRing Allegations.* We also disagree that the few specific incidents of past poor performance that BayRing identifies demonstrate noncompliance with checklist item 4 in New Hampshire. Specifically, BayRing raises a single incident of poor performance by Verizon involving the provisioning of a large-line order for Exeter Hospital and a handful of other incidents where provisioning delays or errors occurred.³⁹⁷ The chief example BayRing cites

³⁹² Because of the lack of sufficient evidence in the record, we do not address here whether an incumbent LEC's refusal to provide high-capacity loops where certain facilities have not been installed is, or is not, a clear violation of the Act or our rules. Such an issue is not properly before us here. To the extent we have not spoken conclusively on that issue in the context of an enforcement proceeding by the time of the *Triennial Review* order, we will address the issue in that proceeding, as well as whether any rule amendments are necessary or appropriate.

³⁹³ For example, Verizon met the parity standard in Delaware every month within the relevant period for the PR-2 (Average Interval Completed) and PR-4 (Percent On Time Performance) metrics for POTs, 2-wire digital and xDSL loops.

³⁹⁴ This metric, MR-2-01-3200, is based on low volumes of DSL provisioning. See Delaware Carrier-to-Carrier Guidelines, at 77. MR-2-01-3200 (Network Trouble Report Rate) (In February: Verizon reported 0.1 percent, and competitive LECs reported 1.28 percent; in March, Verizon reported 0.16 percent, and competitive LECs reported 1.65 percent; in April, Verizon reported 0.18 percent and competitive LECs reported 1.76 percent; in May Verizon reported 0.13 percent, and competitive LECs reported 3.16 percent; in June Verizon reported 1.5 percent, and competitive LECs reported 4.04 percent). The total Volume of Network Troubles for Competitive LECs in Delaware: 9 in February; 12 in March; 13 in April; 15 in May; 19 in June.

³⁹⁵ In Pennsylvania, for February, Verizon reported a 0.81 percent trouble report rate, competitive LECs reported a rate of 0.99 percent; in March, Verizon reported a 0.79 percent trouble report rate, and competitive LECs reported no trouble reports; in April, Verizon reported a 0.85 percent trouble report rate, and competitive LECs reported a 1.04 percent rate; in May, Verizon reported a 0.92 percent trouble report rate, and competitive LECs reported a 1.09 percent rate; in June, Verizon reported a 1.02 percent rate, and competitive LECs reported a 1.08 percent rate. See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17465, para. 85, App. B at B-21.

³⁹⁶ Digital loops account for only 2.2 percent of all wholesale loops provisioned in Delaware.

³⁹⁷ See BayRing Comments at 49; BayRing Comments, Exh. 37 at 11-13.

concerned a 500-line provisioning order for BayRing's customer, Exeter Hospital, which Verizon was scheduled to provision on September 19, 2001.³⁹⁸ BayRing indicates that by improperly provisioning this order, Verizon caused Exeter Hospital to lose service.³⁹⁹ BayRing argues that Verizon did not restore service until fifteen hours later because it failed to escalate the problem to the proper person, and misinformed BayRing as to the proper procedures for restoring service.⁴⁰⁰ BayRing identifies three other incidents as well: a delay in Verizon's provisioning a high capacity loop order on August 8, 2001, from its Portsmouth, New Hampshire central office to a BayRing customer in Kittery, Maine; improper correction of a trouble ticket for a T-1 order in Exeter, New Hampshire; and additional service disruptions stemming from Verizon's failure to port a twenty-three line order.⁴⁰¹

117. As BayRing acknowledges, since these incidents occurred, Verizon has made efforts to resolve provisioning problems that competitive LECs may experience.⁴⁰² For example, in response to the Exeter Hospital incident, Verizon – at the direction of the New Hampshire Commission – has taken steps to ensure that certain “critical-need customers,” essential to public health and safety, never experience service disruptions.⁴⁰³ Verizon also has sought to familiarize BayRing with existing escalation processes and other maintenance procedures applicable to provisioning loops.⁴⁰⁴ We disagree that this or the other isolated incident mentioned by BayRing – occurring approximately one year ago – require a finding that Verizon has failed to comply with checklist item 4. We acknowledge the serious nature of BayRing's complaints, particularly as they relate to hospitals. However, the Commission's review of a section 271 application is based on a snapshot of a BOC's recent performance at the time an application is filed.⁴⁰⁵ The actual experiences of competitors, such as BayRing, are an important consideration in our determination of whether Verizon has satisfied its checklist obligations. However, we must weigh these incidents against Verizon's recent record of provisioning loops in New Hampshire. In doing so, we note that, overall, Verizon consistently met parity for the key ordering and provisioning loop metrics in New Hampshire. Additionally, we find added assurance in the action the New Hampshire Commission took in response to the Exeter Hospital incident to

³⁹⁸ BayRing Comments at 47.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 47-50.

⁴⁰¹ BayRing Comments at 49; BayRing Comments, Exh. 37, at 11-13.

⁴⁰² BayRing Comments at 50; Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 02-157 (filed June 27, 2002) (Verizon DE-NH Aug. 15 Number Portability *Ex Parte* Letter) at 2.

⁴⁰³ Verizon DE-NH Aug. 15 Number Portability *Ex Parte* Letter at 2.

⁴⁰⁴ *Id.*

⁴⁰⁵ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17515, para. 14.

prevent future provisioning problems for essential facilities. Finally, as the Commission has stated in prior orders, there are other means for ensuring that Verizon continues to comply with its obligations to competitive LECs.⁴⁰⁶

118. *Dark Fiber.* Under section 271(c)(2)(B)(ii) of the Communications Act, Verizon must demonstrate that it provides nondiscriminatory access to network elements in accordance with the non-discrimination provisions of section 251(c)(3).⁴⁰⁷ Moreover, our rules specifically include dark fiber within the definition of the loop and transport UNEs that incumbents must make available to competitors pursuant to section 251(c)(3) of the Act.⁴⁰⁸ Based on the record in this proceeding, we find that Verizon provides dark fiber in New Hampshire in compliance with checklist item 4.⁴⁰⁹ Verizon has demonstrated that it offers dark fiber in New Hampshire pursuant to interconnection agreements and its SGAT.⁴¹⁰ Verizon also has agreed to take the additional step of “convert[ing] its entire SGAT into a tariff by the end of 2002,” so that the dark fiber offering will be available under tariff, and thus will permit competitive LECs to directly order anything contained in the SGAT without adopting the terms of the entire SGAT.⁴¹¹ Verizon further shows that it provides dark fiber using the same personnel, facilities, procedures and equipment as it uses for provisioning its own interoffice transmission facilities,⁴¹² and repairs

⁴⁰⁶ See discussion of the Performance Assurance Plan, section VI., *infra.*; see, e.g., *Verizon New Jersey Order*, 17 FCC Rcd 12275, 12363, para. 179.

⁴⁰⁷ 47 U.S.C. § 271(c)(2)(B)(ii); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3791--33795, paras. 205, 209-219 (1999); see also *Verizon New Jersey Order*, App. C at C03 (“[t]o determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist, as developed in the Commission’s local competition rules and orders in effect at the time the application was filed”).

⁴⁰⁸ 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.319(a)(1) & (d)(1)(ii). Dark fiber is analogous to unused copper loop or transport facilities and is physically connected to the incumbent’s network and is easily called into service by the incumbent. *UNE Remand Order*, 15 FCC Rcd at 3776, 3843-46, paras. 174, 325-330 & n.323.

⁴⁰⁹ See *UNE Remand Order*, 15 FCC Rcd at 3776, para. 174; Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-157, (filed Aug. 15, 2002) (Verizon Aug. 15 Dark Fiber *Ex Parte* Letter). For the reasons discussed in this section, we also find Verizon in compliance with checklist item 5 (Transport).

⁴¹⁰ See Verizon Declaration of Lacouture/Ruesterholz, Attach. 1. Verizon points out that during February, March, and April 2002, Verizon received only 397 dark fiber orders in all New England states. Of these orders, 134 were cancelled by the competitive LEC. Verizon completed more than 94 percent of the remaining orders on time. See *Id.* at Attach. 31.

⁴¹¹ Verizon Declaration of Lacouture/Ruesterholz Declaration, at para. 252.

⁴¹² *Id.* at 243; Verizon Aug. 15 Dark Fiber Letter at 1-2 (“Verizon’s dark fiber offering in New Hampshire also satisfies all of the additional dark fiber requirements in Vermont, where the FCC also found that Verizon’s dark fiber offering is checklist-compliant.”).

and maintains fiber that serves competitive LECs using the same methods and procedures it uses for itself.⁴¹³

119. We reject BayRing's claim that Verizon's New Hampshire dark fiber policies are discriminatory and therefore violate our rules.⁴¹⁴ First, BayRing relies on alleged conduct by Verizon in the provisioning of dark fiber in New Hampshire that predates significant actions taken by the New Hampshire Commission to ensure nondiscriminatory access to unbundled dark fiber.⁴¹⁵ Second, BayRing does not allege any discriminatory conduct on the part of Verizon subsequent to the New Hampshire Commission's adoption of its new dark fiber policies, and does not explain how the actions taken by the New Hampshire Commission are deficient to address its concerns. Finally, BayRing raises novel interpretive issues under the Commission's unbundling rules that are best addressed outside of a section 271 proceeding.

120. We disagree with BayRing that Verizon's New Hampshire dark fiber reservations policy violates our unbundling rules. BayRing argues that in New Hampshire Verizon has undue discretion to restrict the amount of dark fiber available for use by competitive LECs.⁴¹⁶ We do not agree. First, BayRing solely relies on alleged discriminatory conduct that occurred in 2001.⁴¹⁷ To the extent that a problem existed with Verizon's New Hampshire dark fiber reservations policy, Verizon shows that the New Hampshire Commission has addressed BayRing's concerns.⁴¹⁸ The New Hampshire Commission modified its dark fiber reservation rules so that, now, Verizon must provide information to competitive LECs on dark fiber availability within 15 business days of any request, and additional information within 30

⁴¹³ Verizon, Declaration of Lacouture/Ruesterholz at para. 244-247; 253-256.

⁴¹⁴ BayRing Comments at 30. BayRing states that the record before the New Hampshire Commission demonstrated that few competitive LECs have ordered dark fiber in New Hampshire because, before placing an order, a competitive LEC must determine whether fiber is available and Verizon has responded 84 percent of the time that dark fiber is not available. *Id.* at 29. BayRing further states that, in Massachusetts, Verizon informed competitive LECs that dark fiber was not available only 35 percent of the time. *Id.* at 30.

⁴¹⁵ According to Verizon, no competitive LEC has challenged any of Verizon's dark fiber inquiry responses in New Hampshire since the implementation of the new procedures. Verizon Aug. 15 Dark Fiber *Ex Parte* Letter.

⁴¹⁶ BayRing states that, unlike Verizon's policy in Massachusetts, the New Hampshire reservations policy, which governs the amount of dark fiber Verizon may reserve for its own use, permits Verizon to earmark available dark fiber for future "aggregate" customer demand, even absent a specific request for use of the fiber from a potential wholesale customer. This policy, BayRing argues, accounts for the 84% rejection rate competitive LECs experience when attempting to order dark fiber. According to BayRing, in Massachusetts Verizon must provide documentation to substantiate any assertion that dark fiber is not available for lease as an UNE, while in New Hampshire, "Verizon will not agree to support any such assertion by providing relevant documentation to CLECs." BayRing Comments at 33 (citing, BayRing Comments Appen. A., Tab 4, Exh. 37, at para. 51).

⁴¹⁷ BayRing Comments at 29.

⁴¹⁸ New Hampshire Commission Aug. 23 Dark Fiber *Ex Parte* Letter at 3.

calendar days, unless the competitive LEC withdraws its request.⁴¹⁹ Moreover, the New Hampshire Commission found that Verizon's "reservations terms are in compliance with [the New Hampshire Commission's] orders and mirror [Verizon's] policies in other . . . states except for Massachusetts. For that reason the [New Hampshire Commission] determined that [Verizon's] reservations policy is reasonable."⁴²⁰ Accordingly, we conclude that the New Hampshire Commission has taken sufficient steps to ensure competitive access to the dark fiber UNE, and we reject BayRing's assertions that Verizon is "hoarding" dark fiber in contravention of our rules.

121. Even if we were to accept BayRing's claim that there was, at some point in time, an 84 percent rejection rate of dark fiber requests,⁴²¹ we note that Verizon, as directed by the New Hampshire Commission, has "considered this issue at length" and taken other steps, in addition to those discussed above, to address the availability of unbundled dark fiber in New Hampshire.⁴²² First, the New Hampshire Commission "adopted an 80 percent fill factor for both dark and lit fiber to reflect the actual usage and avoid double counting by [Verizon]" and more closely mirror the 84 percent rejection rate.⁴²³ Second, the New Hampshire Commission confirmed the validity of Verizon's "no facilities available" responses for three different routes, and addressed the low level of dark fiber availability by requiring Verizon in the future to take into account projected competitive LEC demand, when planning to build new fiber segments or when constructing fiber augments for itself.⁴²⁴ Because Verizon, as directed by the New Hampshire Commission has taken steps to ensure the availability of unbundled dark fiber, and because we have not received any credible evidence of discrimination in dark fiber provisioning

⁴¹⁹ *Id.* For example where Verizon determines that no facilities are available, Verizon must identify for the requesting competitive LEC the route triggering the "no facilities available" response, indicate what alternate routes have been investigated, and identify the first blocked segment on each route as well as all of those segments which are not blocked. We note that Verizon points out that the New Hampshire Commission has never imposed a specific limit on the number of dark fiber strands that Verizon may use or assign. *See*, Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-157, (filed Sept. 12, 2002) (Verizon Sept. 12 Dark Fiber *Ex Parte* Letter).

⁴²⁰ New Hampshire Commission Aug. 23 Dark Fiber *Ex Parte* Letter at 3.

⁴²¹ Although BayRing provides multiple citations to state testimony concerning its cross-examination of a Verizon witness on the dark fiber issues, it fails to state in its comments how it calculated the 84 percent figure, what period of time was measured, or how many occurrences this alleged rejection rate represents. *See* BayRing Comments at 29.

⁴²² Moreover, Verizon argues that "BayRing is not referring to orders for dark fiber that are rejected. It is actually referring to queries on the *availability* of dark fiber 'because prior to placing an order, a [competitive LEC] must first inquire whether there is fiber available . . .'" New Hampshire Commission Sept. 12 Dark Fiber *Ex Parte* Letter at 2 (quoting BayRing Comments at 29) (emphasis added).

⁴²³ New Hampshire Commission Aug. 23 Dark Fiber *Ex Parte* Letter at 2.

⁴²⁴ The New Hampshire Commission "found that such a requirement dose not rise to the level of construction of new or superior facilities." *Id.*; New Hampshire Commission Sept. 12 Dark Fiber *Ex Parte* Letter at 2.

sufficient to outweigh Verizon's showing, we are not persuaded that Verizon fails to provide dark fiber in New Hampshire in compliance with our unbundling rules.

122. Finally, we reject BayRing's contention that Verizon's dark fiber policies violate checklist item 2 by restricting points of access to dark fiber. BayRing argues that Verizon will only provide dark fiber as a UNE to competitive LECs where the fiber is located at the Verizon wire center and terminated at both ends of the route; and that Verizon will not provision dark fiber as a UNE to competitive LECs when the fiber is found in a cable vault, manhole or other location outside of the wire center.⁴²⁵ We note that BayRing's request for access to fiber at points other than at a central office is, in effect, a request for access to a *fiber subloop*, and is therefore subject to the Commission's subloop rules and analysis.⁴²⁶ The Commission's subloop unbundling rules do not address BayRing's request that it be permitted access to dark fiber at splice points. Instead the Commission's rules mandate access to subloops at terminals in the incumbent's plant, that is, at the customer premises; at the main distribution frame; and anywhere that a feeder and distribution plant meet.⁴²⁷ Accordingly, under the Commission's current subloop unbundling analysis, BayRing is not correct that Verizon must make available dark fiber that is not already terminated at accessible terminals. BayRing's request for access to a fiber subloop cannot be addressed in a section 271 proceeding because it raises issues of interpretation of Commission rules. Therefore, BayRing could raise such requests in a complaint proceeding but not in a section 271 proceeding.

IV. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

123. Based on the evidence in the record, we conclude, as did the New Hampshire and Delaware Commissions, that Verizon provides access and interconnection on terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the requirements of section 251(c)(2) and as specified in section 271, and applied in the Commission's prior orders.⁴²⁸ However, two commenters—one in New Hampshire, the other in Delaware—describe

⁴²⁵ BayRing Comments at 30-31. Furthermore, BayRing asserts that when Verizon constructs and installs new fiber routes, Verizon's practice is to leave the network partially unbuilt, refusing to offer the new fiber to competitive LECs until the route is completely spliced from end to end, and terminated at terminals at each end. BayRing argues that these practices are discriminatory and violate Section 251(c)(3) of the Act, because they permit Verizon to "grossly limit" the available inventory of available dark fiber UNES in New Hampshire while ensuring that there is excess supply available for Verizon's own use and its retail customers.

⁴²⁶ See 47 C.F.R. § 51.319(a)(2).

⁴²⁷ See *UNE Remand Order*, 15 FCC Rcd at 3789-90, para. 206.

⁴²⁸ Verizon Application at 19; Verizon DE-NH Lacouture/Ruesterholz Decl. at paras. 11-14, 22, 35, 42-47; Verizon DE Lacouture/Ruesterholz Decl. at paras. 13-16, 25, 31-38, 41-47. We note that Verizon provides the same interconnection to competitive LECs in New Hampshire and Delaware that it provides in states that have already received section 271 approval, and provides them using the same processes and procedures. Moreover, as Verizon points out, we have found that Verizon provides satisfactory performance in providing interconnection to (continued....)

specific incidents in their respective comments that they claim warrant a finding of checklist noncompliance with respect to checklist item 1.⁴²⁹

124. In New Hampshire, BayRing asserts that Verizon engaged in anticompetitive conduct with respect to the formation of an interconnection agreement between Verizon and Network Plus.⁴³⁰ BayRing argues that Verizon delayed entering into a previously-approved interconnection agreement with Network Plus, forcing it to purchase resale services rather than less expensive UNEs.⁴³¹ This increased Network Plus's costs, which impaired its ability to be profitable and competitive and, in turn, harmed customers by delaying their service and increasing their costs.⁴³² In this way, argues BayRing, Verizon created barriers to competitive entry in New Hampshire.⁴³³ Verizon argues that this isolated instance does not demonstrate that Verizon engages in unfair interconnection tactics in New Hampshire.⁴³⁴ In fact, Verizon argues that its interconnection policies are identical to its policies in states where it has already received section 271 approval.⁴³⁵

125. We reject BayRing's arguments. First, BayRing raises a single incident in which it argues Verizon delayed entering into an interconnection agreement. BayRing raises no other complaints concerning Verizon's compliance with checklist item one, nor does any other commenting party, including the New Hampshire Commission. We find that this single incident, without more, is insufficient to support a finding that Verizon is engaged in anticompetitive or discriminatory behavior with regard to checklist item one. Nothing in BayRing's assertions persuades us that these incidents fall outside the normal carrier-to-carrier relationship or constitute discrimination or anticompetitive behavior. Moreover, even if true, none of BayRing

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competitive LECs in Massachusetts and Pennsylvania, where volumes are higher than in New Hampshire and Delaware. Verizon Application at 19; *Verizon Massachusetts Order*, 16 FCC Rcd 8988, 9087, para. 182; *Verizon Pennsylvania Order*, 16 FCC Rcd 17419, 17473-74, para. 99.

⁴²⁹ See Cavalier Comments at 1-5; BayRing Comments at 71-76, 81-83. Cavalier asserts that its on-going interconnection dispute with Verizon violates section 271(c)(1)(A), checklist item 1 (interconnection), checklist item 13 (reciprocal compensation), and other checklist items. Because Cavalier does not explain how this unresolved contractual matter rises to the level of checklist non-compliance, we reject Cavalier's assertions. See section IV.A.1., *infra*.

⁴³⁰ BayRing Comments at 72.

⁴³¹ *Id.* at 72-75.

⁴³² *Id.* at 73.

⁴³³ *Id.* at 70-89.

⁴³⁴ Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket. 02-157 (filed Aug. 16, 2002) (Verizon DE-NH Aug. 16 *Ex Parte* Letter) at 5.

⁴³⁵ *Id.* at 5; Verizon Application at 19. See Verizon Reply at 34-35.

arguments is sufficient to outweigh Verizon's showing of compliance with checklist item 1 in New Hampshire.

1. Pricing of Interconnection

126. Checklist item one requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."⁴³⁶ Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁴³⁷ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.⁴³⁸ The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation at rates that are based on TELRIC.⁴³⁹

127. In its comments, BayRing alleges that Verizon's challenge to existing collocation power rates in New Hampshire precludes a finding of checklist compliance.⁴⁴⁰ Verizon has appealed the collocation power rates established by the New Hampshire Commission to the New Hampshire Supreme Court.⁴⁴¹ BayRing argues that, until that appeal is resolved, "the collocation power rates will, in effect, be interim, leaving competitive LECs with a tremendous amount of uncertainty as to what the ultimate rates will be."⁴⁴² According to BayRing, as long as Verizon continues to challenge the collocation power rates established by the New Hampshire Commission, there can be no finding of checklist compliance.⁴⁴³

⁴³⁶ 47 U.S.C. § 271(c)(2)(B)(i).

⁴³⁷ 47 U.S.C. § 251(c)(2).

⁴³⁸ 47 U.S.C. § 252(d)(1).

⁴³⁹ See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

⁴⁴⁰ BayRing Comments at 27. See also BayRing Reply at 15 (clarifying that the uncertainty concerning collocation power pricing should be considered under checklist item one). Specifically, BayRing claims that, until the uncertainty is resolved in regard to Verizon's collocation power rates, there can be no finding that Verizon is providing collocation at TELRIC prices. BayRing Reply at 16.

⁴⁴¹ BayRing Comments at 28.

⁴⁴² *Id.* In its reply, BayRing states that this uncertainty is a "further indication of why Verizon's application is not in the public interest." Because BayRing provides no analysis in support of this statement and because we find that grant of Verizon's 271 application is otherwise in the public interest, we decline to reject the application on this public interest basis.

⁴⁴³ *Id.* at 29. In further support of this position, BayRing quotes a letter from the New Jersey state commission stating that "a Verizon challenge of the validity or effective date of the rates or any attempt to increase or otherwise (continued....)"

128. In establishing Verizon's New Hampshire collocation rates, the New Hampshire Commission initially determined that Verizon incurred no incremental cost for producing the power delivered to the collocation point.⁴⁴⁴ The New Hampshire Commission stated that Verizon failed to show that the installation of additional power equipment was necessary to meet competitive LEC needs.⁴⁴⁵ Accordingly, the New Hampshire Commission declined to approve Bell Atlantic's collocation power costs.⁴⁴⁶ On August 3, 2001, Verizon filed a Motion for Rehearing and/or Reconsideration of, among other things, the New Hampshire Commission's decision concerning collocation power costs.⁴⁴⁷ On reconsideration, the New Hampshire Commission found that the estimated power plant investment modeled by Verizon would require further investment to accommodate incremental growth.⁴⁴⁸ After making several modifications to Verizon's power cost calculations, the New Hampshire Commission established the recurring monthly per amp costs for collocation power.⁴⁴⁹

129. On December 21, 2001, Verizon sought reconsideration of the modifications made by the New Hampshire Commission to Verizon's collocation power costs.⁴⁵⁰ Specifically, Verizon asked the New Hampshire Commission to: (1) reconsider its decision to require a different installation factor; (2) clarify that Verizon may charge a statewide average rate for DC power; (3) adjust the amps over which the remaining level of investment is spread once the total power investment is reduced by the amount already recovered via switching; and (4) correct the method of applying the joint and common cost factor.⁴⁵¹ On February 4, 2002, the New Hampshire Commission released an order denying Verizon's request for reconsideration of the installation factor and the amps over which the remaining level of investment is spread.⁴⁵² The

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change these rates, will call into question whether modified rates would be TELRIC-compliant, and, therefore, also call into question the Board's finding of compliance with Checklist Item 2." *Id.* at 28. We note that the New Hampshire Commission could have expressed similar concerns in light of Verizon's appeal of the collocation power rates, but declined to do so. Instead, the New Hampshire Commission determined that, subject to the certain conditions, Verizon had met all 14 checklist items. New Hampshire Commission Comments at 18.

⁴⁴⁴ *New Hampshire SGAT Order* at 117-18.

⁴⁴⁵ *Id.*; see also BayRing Comments at 27-28.

⁴⁴⁶ *New Hampshire SGAT Order* at 162.

⁴⁴⁷ *New Hampshire SGAT Recon. Order* at 3; BayRing Comments at 28.

⁴⁴⁸ *New Hampshire SGAT Recon. Order* at 35.

⁴⁴⁹ *Id.* at 37. Specifically, the New Hampshire Commission modified the installation factor used by Verizon, corrected a computational error in the application of the joint and common cost factor to power plant investment, and ordered Verizon to back-out the power costs already recovered via switching charges. *Id.* at 36-37.

⁴⁵⁰ *New Hampshire SGAT Second Recon. Order* at 1-3.

⁴⁵¹ *Id.* at 2-3.

⁴⁵² *Id.* at 10-11.

New Hampshire Commission did, however, require Verizon to offer DC power on a deaveraged basis and corrected a computational error concerning the application of the joint and common cost factor.⁴⁵³ The New Hampshire Commission also re-calculated the DC power rates using an updated joint and common cost factor.⁴⁵⁴ The order required Verizon to file compliance SGAT pages with an effective date of July 6, 2001.⁴⁵⁵

130. Based on the evidence in the record, we do not agree that Verizon's pending appeal of the collocation power rates established by the New Hampshire Commission precludes a finding of checklist compliance. In its comments, BayRing concedes that the New Hampshire Commission established TELRIC-compliant collocation power rates⁴⁵⁶ and BayRing does not allege that Verizon is failing to charge the appropriate rates. The crux of BayRing's claim is that the pending appeal of Verizon's collocation power rates makes them "interim" and that the resulting uncertainty surrounding these rates is inhibiting competing LECs from providing service to particular customers.⁴⁵⁷ There is no evidence in the record to suggest that Verizon's collocation power rates are "interim" as BayRing suggests. Nothing contained in the SGAT orders indicates that the New Hampshire Commission considered Verizon's collocation power rates to be temporary or interim, and there is no indication that the New Hampshire Commission will revisit collocation rates in the near future.

131. Contrary to BayRing's assertion, the mere fact that Verizon is disputing the permanent collocation power rates established by the New Hampshire Commission does not preclude a finding of checklist compliance. As this Commission has stated:

[T]he section 271 process could not function as Congress intended if we adopted a general policy of denying a section 271 application accompanied by unresolved pricing or other intercarrier disputes. . . . If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome.⁴⁵⁸

Thus, although there may be some degree of uncertainty concerning the ultimate outcome of the pending appeal, such uncertainty does not warrant denial of Verizon's New Hampshire section 271 application. Until that appeal is resolved, competitive LECs have the relative certainty of the collocation power rates established by the New Hampshire Commission.

⁴⁵³ *Id.* at 11-12.

⁴⁵⁴ *Id.* at 13.

⁴⁵⁵ *Id.* 13-14.

⁴⁵⁶ BayRing Comments at 28 (stating that the New Hampshire Commission "has determined a TELRIC-compliant collocation power rate").

⁴⁵⁷ *Id.*

⁴⁵⁸ *SWBT Texas Order*, 15 FCC Rcd 18394, para. 87.

132. In Delaware, Cavalier alleges that Verizon refuses to provide compensation for Verizon-originated traffic that Cavalier carries from the physical interconnection point to Cavalier's switch.⁴⁵⁹ As this refusal, which has been the subject of a dispute between Verizon and Cavalier for some time, has most recently arisen in the context of interconnection negotiations where Verizon is attempting to create a distinction between physical and financial interconnection points, Cavalier now alleges that this refusal causes Verizon to fail to satisfy its obligation to provide interconnection at just, reasonable, and nondiscriminatory rates pursuant to checklist item one.⁴⁶⁰ Cavalier raised this same complaint in the New Jersey section 271 proceeding, where it was cast as a violation of Verizon's obligation to enter reciprocal compensation arrangements pursuant to checklist item 13.⁴⁶¹ Cavalier also has raised this complaint to the Delaware Commission, both in the state section 271 proceeding, and a separate complaint proceeding. The Delaware Commission declined to resolve this dispute in the state section 271 proceeding, instead stating that it was a contractual dispute that it would resolve "promptly" in the separate complaint proceeding.⁴⁶² Consistent with our conclusion in the *Verizon New Jersey Order* and the Delaware Commission determination, we find that this dispute concerning conflicting interpretations of an interconnection agreement is best resolved by the Delaware Commission in Cavalier's complaint proceeding.⁴⁶³ We decline to interfere with an ongoing state proceeding that is expected to resolve a dispute over an interconnection agreement promptly.

133. Accordingly, we find that Verizon offers interconnection in New Hampshire and Delaware to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item one.

B. Checklist Item 11 – Local Number Portability

134. Section 271(c)(2)(B)(xi) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.⁴⁶⁴ Based on the evidence in the record we conclude, as did the Delaware and New Hampshire Commissions, that Verizon provides local number portability in accordance with checklist item 11.⁴⁶⁵ Although in

⁴⁵⁹ Cavalier Comments at 2.

⁴⁶⁰ *Id.* at 5.

⁴⁶¹ *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159. Cavalier also claims here that Verizon's refusal is a violation of checklist item 13. Cavalier Comments at 5.

⁴⁶² Delaware Commission Comments at 8-9; *see also* Verizon Reply at 35-36.

⁴⁶³ *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159. *See also* *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118.

⁴⁶⁴ 47 U.S.C. § 271(c)(2)(B)(xi).

⁴⁶⁵ *See* Verizon Application at 87-88.

Delaware Verizon failed to achieve the benchmark in four of the relevant months, the sample sizes were too small to be statistically reliable.⁴⁶⁶ As noted above, Verizon uses the same processes and procedures relating to unbundled loops in Delaware as it does in Pennsylvania.⁴⁶⁷ Therefore, because there is insufficient data in Delaware, we look to Verizon's performance in Pennsylvania as a basis for our evaluation. Verizon has met the benchmark standard for this measurement in Pennsylvania in each relevant month, where volumes are considerably higher than in Delaware.⁴⁶⁸ Indeed, Verizon's performance in Pennsylvania never dropped below 99 percent, a level of performance well above the 95 percent benchmark for this measurement. We note that no commenter challenges Verizon's compliance with this checklist item.

C. Remaining Checklist Items (3, 5, 6, 7, 8, 9, 10, 12, 13, and 14)

135. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),⁴⁶⁹ item 5 (transport),⁴⁷⁰ item 6 (unbundled local switching),⁴⁷¹ item 7 (911/E911 access and directory assistance/operator services),⁴⁷² item 8 (white pages directory listings),⁴⁷³ item 9 (numbering administration),⁴⁷⁴ item 10 (databases and associated signaling),⁴⁷⁵ item 12 (local dialing parity),⁴⁷⁶ item 13 (reciprocal compensation),⁴⁷⁷ and item 14 (resale).⁴⁷⁸ Based on the evidence in the record, we conclude, as did the New Hampshire and Delaware Commissions, that Verizon demonstrates that it is in compliance with

⁴⁶⁶ In Delaware, from February through June 2002, Verizon completed an average of only nine local number portability orders per month.

⁴⁶⁷ Verizon DE Lacouture/Ruesterholz Decl., para. 79.

⁴⁶⁸ See Pennsylvania PR-4-07-3540 (Percent On Time Performance – Local Number Portability) (99.75% in February, 99.51% in March, 99.66% in April; 99.69% in May, 99.54% in June).

⁴⁶⁹ 47 U.S.C. § 271(c)(2)(B)(iii).

⁴⁷⁰ 47 U.S.C. § 271(c)(2)(B)(v).

⁴⁷¹ 47 U.S.C. § 271(c)(2)(B)(vi).

⁴⁷² 47 U.S.C. § 271(c)(2)(B)(vii).

⁴⁷³ 47 U.S.C. § 271(c)(2)(B)(viii).

⁴⁷⁴ 47 U.S.C. § 271(c)(2)(B)(ix).

⁴⁷⁵ 47 U.S.C. § 271(c)(2)(B)(x).

⁴⁷⁶ 47 U.S.C. § 271(c)(2)(B)(xii).

⁴⁷⁷ 47 U.S.C. § 271(c)(2)(B)(xiii).

⁴⁷⁸ *Id.* § 271(c)(2)(B)(xiv).

checklist items 3, 5, 6, 7, 8, 9, 10, 12, 13, and 14 in New Hampshire and Delaware.⁴⁷⁹ No parties objected to Verizon's compliance with these checklist items.

V. SECTION 272 COMPLIANCE

136. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."⁴⁸⁰ Based on the record, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.⁴⁸¹ Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Delaware and New Hampshire as it does in Pennsylvania, New York, Connecticut, and Massachusetts--states in which Verizon has already received section 271 authority.⁴⁸² No party challenges Verizon's section 272 showing.⁴⁸³

VI. PUBLIC INTEREST ANALYSIS

137. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.⁴⁸⁴ At the same time, section 271(d)(4) of the Act states in full that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection

⁴⁷⁹ See Verizon Application at 78-79 (checklist item 3), 52-53 (checklist item 5); 51-52 (checklist item 6), 80-83 (checklist item 7), 83-85 (checklist item 8), 85 (checklist item 9), 85-87 (checklist item 10); 88-89 (checklist item 12); 89-90 (checklist item 13); 90-93 (checklist item 14); Delaware Commission Comments at 16, 19-28; New Hampshire Commission Comments at 11-12, 20.

⁴⁸⁰ 47 U.S.C. § 271(d)(3)(B); Appendix F at paras. 68-69.

⁴⁸¹ See Verizon Application at 110-115; Verizon Application Appen. A, Vol. 5, Tab H, Declaration of Susan C. Browning (Verizon Browning Decl.) at para. 4.

⁴⁸² *Verizon Pennsylvania Order*, 16 FCC Rcd at 17486, para. 124; *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, Memorandum Opinion and Order, (2001) (*Verizon Connecticut Order*); 16 FCC Rcd 14147, 14178-79, para. 73; *Verizon Massachusetts Order*, 16 FCC Rcd at 9114-17, paras. 226-31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4152-61, paras. 401-21; Verizon Browning Decl. at paras 3-4.

⁴⁸³ Pricewaterhouse Coopers completed the first independent audit of Verizon's section 272 compliance pursuant to section 53.209 of the Commission's rules. See 47 C.F.R. § 53.209. See Letter from Pricewaterhouse Coopers LLP to Magalie Roman Salas, Secretary, Federal Communications Commission (June 11, 2001) (transmitting audit report). Although the audit raises issues that may require further investigation, the audit results, standing alone, are insufficient to establish that Verizon does not comply with section 272.

⁴⁸⁴ 47 U.S.C. § 271(d)(3)(C); Appen. F at paras. 70-71.

(c)(2)(B).⁴⁸⁵ The Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

138. We conclude that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in New Hampshire and Delaware are open to competition. We further find that, as noted in prior section 271 orders, BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.⁴⁸⁶

139. We disagree with commenters that low levels of facilities-based residential competition in New Hampshire and Delaware indicate that it would be inconsistent with the public interest to grant this application.⁴⁸⁷ The Commission consistently has declined to adopt a market share or other, similar test for BOC entry into long distance.⁴⁸⁸ Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes in any one particular mode of entry or in general do not necessarily undermine that showing.⁴⁸⁹ As the Commission has said in previous section 271 orders, factors beyond the control of the BOC, such as individual competitive LEC entry strategies, might explain a low residential customer base.⁴⁹⁰

⁴⁸⁵ 47 U.S.C. §271(d)(4).

⁴⁸⁶ See *SWBT Texas Order*, 15 FCC Rcd at 18558-89, para. 419.

⁴⁸⁷ AT&T argues that Verizon has created barriers to entry for residential service. AT&T claims that fewer than one percent of lines – and nearly no residential lines – in both Delaware and New Hampshire are served by UNE-based competitors. Moreover AT&T claims that enhancing long distance competition is not a sufficient reason why Verizon's section 271 approval would serve the public interest. AT&T Comments at 38-45; AT&T Reply at 17. Sprint also asserts that we should take into account low levels of competition, regulatory uncertainty, the weakening economy, the financial difficulties of some competitive LECs, and decisions by other BOCs not to compete out-of-region, and that therefore, the public interest would not be served by granting Verizon section 271 approval. Sprint Comments at 4-12.

⁴⁸⁸ See, e.g., *Ameritech Michigan Order*, 12 FCC Rcd at 20748, para. 391; see also *Sprint v. FCC*, 274 F.3d at 553-54 ("The statute imposes no volume requirements for satisfaction of [section 271(c)(1)(A)].").

⁴⁸⁹ Indeed, the Department of Justice concluded that opportunities for facilities-based carriers to serve business customers are available in these states. The Verizon systems and processes serving Delaware and New Hampshire are largely the same as those approved in the *Verizon Pennsylvania Order* and the *Verizon Massachusetts Order* respectively. Moreover, the Department of Justice concludes that Verizon supports opportunities for competitive LECs to serve both business and residential customers via facilities and other modes of entry. Department of Justice Evaluation at 5-10. See also Verizon Reply at 8.

⁴⁹⁰ See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

140. Moreover, given an affirmative showing that the competitive checklist has been satisfied, neither the financial hardships of the competitive LEC community nor low customer volumes in any one particular mode of entry or in general, would necessarily undermine that showing. Verizon demonstrates that there is significant local competition in Delaware and New Hampshire, that Verizon's local market will remain open to competition, and that section 271 approval would enhance local and long distance competition in Delaware and New Hampshire.⁴⁹¹ Indeed, the Department of Justice concluded that opportunities to serve business customers via the facilities-based and resale modes of entry are available in Delaware and New Hampshire and there do not appear to be any material non-price obstacles to residential competition in Delaware and New Hampshire.⁴⁹² As we have noted in previous section 271 orders,⁴⁹³ several factors might explain a low residential customer base, such as the entry strategies of individual competitive LECs or other BOCs. We have consistently declined to use such factors – which are beyond the control of the section 271 applicant – to deny an application, and we disagree with Sprint in this regard.⁴⁹⁴

141. As we discuss more fully in other sections of this Order, we disagree with BayRing that past disputes with Verizon demonstrate that granting section 271 approval in New Hampshire would not be in the public interest.⁴⁹⁵ Verizon has demonstrated that its local market is open to competition and that it satisfies the competitive checklist. As we discuss more fully elsewhere in this order, Verizon provides nondiscriminatory access to high capacity loops and dark fiber.⁴⁹⁶ In addition, each of the problems BayRing has identified has been resolved,⁴⁹⁷ and

⁴⁹¹ Verizon Reply at 39.

⁴⁹² Department of Justice Evaluation at 6-7, 9.

⁴⁹³ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

⁴⁹⁴ *Id.* We note that the D. C. Circuit confirmed that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance. *Sprint v. FCC*, 274 F.3d at 559.

⁴⁹⁵ BayRing argues that Verizon's practices in New Hampshire have created barriers to competitive entry in the state by delaying interconnection agreements, forcing purchase of resale services rather than less expensive UNEs, failing to pay the appropriate reciprocal compensation rates mandated by the parties' interconnection agreement, restricting access to enhanced extended links (EELs), delaying providing dark fiber, and inadequately provisioning UNEs. BayRing argues that these anticompetitive actions by Verizon undercut a finding that Verizon's entry into long distance in Delaware and New Hampshire is in the public interest. BayRing Comments at 70-89. See Letter from Eric J. Branfman, Counsel to BayRing, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-157 (filed June 27, 2002) (BayRing DE-NH Aug. 20 OSS *Ex Parte* Letter). See Sections III and IV, *supra*. BayRing also asserts that a dispute with Verizon over reciprocal compensation, which was resolved prior to the filing of this application, is evidence of a public interest violation. BayRing Comments at 76-80. As we have stated in prior section 271 orders, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions." *Verizon New Jersey Order*, para. 159 (citing *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118). Clearly, here, the matter was resolved and is not relevant to our consideration of the public interest in this application.

⁴⁹⁶ See Section III.C., *supra*.

BayRing does not show that any current problems exist that would support a finding that it is not in the public interest to grant section 271 approval to Verizon in New Hampshire.

A. Price Squeeze Analysis

142. Commenters allege the existence of a price squeeze in New Hampshire and Delaware that compels a finding that grant of this application is not in the public interest. We first address BayRing's allegation of a price squeeze in New Hampshire and then address AT&T's allegation of a price squeeze in Delaware.

1. New Hampshire

143. BayRing contends that Verizon's New Hampshire UNE rates do not provide for a sufficient profit for an efficient competitor to serve residential customers and that this has doomed competitors to failure in the residential market.⁴⁹⁸ In support of its contention, BayRing presents the price squeeze analysis it submitted in the state section 271 proceeding and an updated price squeeze analysis.⁴⁹⁹ BayRing contends that, because the margins available to new entrants preclude profitable entry into the residential market, Verizon's application should be denied on public interest grounds.⁵⁰⁰ We conclude that BayRing has not established the existence of a public interest violation because BayRing has failed to demonstrate that a price squeeze exists in New Hampshire.

144. In our review of a section 271 application, the public interest requirement is an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.⁵⁰¹ Congress did, however, explicitly prohibit the Commission from enlarging the scope of the competitive checklist.⁵⁰² Accordingly, consistent with our statutory obligation, we will consider the existence and scope of an alleged price squeeze along with all other relevant public interest factors.

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⁴⁹⁷ See BayRing Comments at 70-89; Verizon Reply at 39, n. 32.

⁴⁹⁸ BayRing Comments at 55; *see also* BayRing Declaration of Benjamin Thayer (BayRing Thayer Decl.) at 5, para. 14.

⁴⁹⁹ *Id.* at 55-62; BayRing Thayer Decl. at 6-8, paras. 18-21 and Attach. 2 (presenting an updated price squeeze analysis). BayRing also contends that the lack of competitive entry bears out the fact that a price squeeze exists in New Hampshire and that the price squeeze analysis presented by Verizon in its application is flawed. BayRing Comments at 62-69. As further evidence of a price squeeze, BayRing argues that the New Hampshire Commission determined that there is a price squeeze in New Hampshire. *Id.* at 69-70.

⁵⁰⁰ *Id.* at 70.

⁵⁰¹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4161-62, paras. 423-24.

⁵⁰² 47 U.S.C. § 271(d)(4).

a. Revenue and Cost Assumptions

145. The factual information necessary to conduct a price squeeze analysis is highly complex. Courts have recognized the particular difficulty of conducting a price squeeze inquiry in a regulated industry.⁵⁰³ BayRing and Verizon's analyses provide immediate examples of this difficulty. Each price squeeze analysis before us has distinct deficiencies. The key elements -- costs, revenues, and necessary margins -- depend on numerous different variables and assumptions, and thus result in different conclusions concerning the existence of a price squeeze.⁵⁰⁴ For the reasons presented below, we find that we cannot rely on the price squeeze analyses presented by BayRing in this proceeding because they fail to include certain revenue information that the Commission has determined is relevant to a residential price squeeze analysis. Thus, while we do not endorse Verizon's analysis, we nevertheless determine that a price squeeze has not been demonstrated in this proceeding.

146. As an initial matter, we question the probative value in this proceeding of the initial price squeeze analysis presented to the New Hampshire Commission in the state section 271 proceeding as this analysis was done prior to the adoption of voluntary rate reductions by Verizon. BayRing claims that Verizon's subsequent reductions to loop rates and to switching rates do not impact its overall findings that there is no prospect for profit in the residential market.⁵⁰⁵ BayRing does not, however, present any specific support for this conclusion and admits that the average monthly switching costs presented by Verizon in its price squeeze analysis are lower than the figures used in BayRing's initial price squeeze analysis before the New Hampshire Commission.⁵⁰⁶ Further, BayRing does not address whether or how the reductions to transport rates affect its initial price squeeze analysis. For these reasons, we cannot find that a price squeeze currently exists in New Hampshire based on the initial price squeeze analysis submitted in the state section 271 proceeding.⁵⁰⁷

147. Next, we consider the updated price squeeze analysis presented by BayRing in this proceeding and determine that we cannot rely on this analysis because it fails to include all relevant revenue information.⁵⁰⁸ BayRing states that the residential revenue figures used in the

⁵⁰³ *Concord Massachusetts v. Boston Edison Co.*, 915 F.2d 17 (1st Cir. 1990).

⁵⁰⁴ Compare Verizon Hickey/Garzillo/Anglin Decl. at 23, para. 66 with BayRing Thayer Decl. at 6-7, paras. 18-20 and Confidential Attach. 2. See also BayRing Comments at 65-69 (discussing the differences between the two analyses).

⁵⁰⁵ BayRing Comments at 69-70.

⁵⁰⁶ *Id.* at 70.

⁵⁰⁷ Even if we agree with BayRing that the initial price squeeze analysis can be considered for purposes of determining whether a price squeeze currently exists in New Hampshire, the analysis suffers from the same deficiencies as the updated analysis presented in this proceeding, as discussed below.

⁵⁰⁸ In addition, BayRing fails to provide cost data or other evidence to support its internal cost estimates. Without this data, we cannot determine whether the costs included in the analysis are those of an efficient carrier as required (continued....)

updated analysis are derived from the initial price squeeze analysis submitted in the state section 271 proceeding.⁵⁰⁹ According to BayRing, that analysis did not consider access revenue or toll revenue in calculating the competing LEC revenue.⁵¹⁰ BayRing failed to include access revenues because it asserted that such revenues are steadily decreasing and competing LEC access revenues may represent a “washout,” that is, competitive LEC access revenues for incoming calls would be “washed out” by competitive LEC payment of access charges it pays to complete toll calls for its customers.⁵¹¹ BayRing also excluded toll revenues in its analysis because it concluded that such revenue is “speculative” and because a competitive LEC incurs costs to provide toll service.⁵¹²

148. Even assuming that BayRing provides adequate justification for excluding some of these revenues, the analysis provided by BayRing fails to include *any* of these revenues. The Commission has determined that such revenues are relevant to a price squeeze analysis and that a price squeeze analysis would be fatally deficient without some evidence of the impact of this revenue on whether competitors are “doomed to failure.”⁵¹³ Moreover, there is no “washout” of access revenues for incoming calls and access charges for outgoing calls because BayRing would collect toll revenues for the outgoing calls (which it excludes from the analysis) to cover the access charges. As for BayRing’s contention that costs are incurred to provide toll service, BayRing provides no specific cost information to demonstrate that its toll costs exceed its toll revenues. Further, BayRing’s estimate of Verizon’s available residential customer revenues fails to account for the recent increase in the Subscriber Line Charge (SLC).⁵¹⁴ Because BayRing fails to provide an adequate reason to exclude these revenues from its analysis, we must conclude that BayRing’s price squeeze analysis is deficient in that it omits relevant evidence.

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by our previous order. See *Verizon Vermont Order*, 17 FCC Rcd at 7664, para. 70 (stating that the pertinent question is what is a sufficient profit for an efficient competitor); see also *Verizon Reply* at 43-44.

⁵⁰⁹ BayRing Comments at 61.

⁵¹⁰ *Id.* at 57; *Verizon Reply* at 43.

⁵¹¹ *Id.* at 57-58.

⁵¹² *Id.* at 58.

⁵¹³ In our *Vermont Order*, we determined that both access and toll revenues are relevant to a residential price squeeze analysis. *Verizon Vermont Order*, 17 FCC Rcd at 7664, para. 71. In that proceeding, we found that the commenters had not demonstrated that a price squeeze existed because they had failed to, among other things, provide such relevant evidence. *Id.*

⁵¹⁴ On July 1, 2002, the SLC cap for residential and single-line business lines increased to \$6.00. See *Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Order, 17 FCC Rcd 10,868, 10,881, para. 30. BayRing’s updated analysis fails to account for this increase. See BayRing Thayer Decl. at Confidential Attach. 2.

149. BayRing's price squeeze analysis is further compromised by the inclusion of an assumption that Verizon's available revenues should be discounted by 10 percent for comparative purposes. BayRing states that the revenue figure used in its analysis includes a 10 percent discount because competitive LECs must charge less than Verizon to win a customer.⁵¹⁵ We find this assumption inappropriate for inclusion in a price squeeze analysis. Moreover, even if it were appropriate, BayRing fails to provide any cost or other data to support this assertion. For these reasons, we find that BayRing has failed to provide an analysis that demonstrates the existence of a price squeeze in New Hampshire.⁵¹⁶

b. Other Evidence of a Price Squeeze

150. In addition to its quantitative price squeeze analyses, BayRing argues that the lack of competitive entry bears out the fact that there is a price squeeze in New Hampshire.⁵¹⁷ BayRing claims that Verizon's statistics as to the number of competitive residential lines is "sobering and corroborates the price squeeze analysis"⁵¹⁸ We disagree that the low levels of facilities-based residential competition in New Hampshire provide evidence of a price squeeze. As we stated in prior section 271 orders, factors beyond the control of the BOC, such as individual competitive LEC entry strategies, might explain a low residential customer base.⁵¹⁹ It is precisely this reason why a BOC does not need to demonstrate a specific level of competitive market penetration before making an application under section 271. Given an affirmative showing that the competitive checklist has been satisfied and that markets are therefore open, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not undermine that showing.⁵²⁰

⁵¹⁵ BayRing Comments at 61.

⁵¹⁶ Adjusting for the deficiencies in BayRing's analysis, there appears to be a positive margin in Zone 1 and parts of Zone 2. We also note that BayRing's public interest analysis fails to take into account how evidence that there is facilities-based competition available to a majority of the state's population factors into a determination of whether the public interest requirement is not met because competitors are doomed to failure. See Letter from Richard T. Ellis, Director, Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-157 at 2 (filed Aug. 16, 2002) (explaining where in the record Verizon has responded to commenters' public interest claims). According to Verizon, AT&T serves, via its cable facilities, 64 percent of the population in New Hampshire. *Id.*

⁵¹⁷ See BayRing Comments at 62-65.

⁵¹⁸ *Id.* at 63.

⁵¹⁹ *Verizon Maine Order*, 17 FCC Rcd at 11697-98, at para. 59; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126. See also *Verizon Aug. 16 Ex Parte Letter* at 1.

⁵²⁰ *Verizon Maine Order*, 17 FCC Rcd at 11697-98, para. 59; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126; see *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77. As further evidence of a price squeeze in New Hampshire, BayRing cites to the New Hampshire Commission March 1 Letter, wherein the New Hampshire Commission stated that its proposed conditions would "reduce, if not eliminate, the wholesale/retail 'price squeeze.'" BayRing Comments at 69 (quoting the *New Hampshire Commission March 1 Letter* at 4). Because the (continued....)

151. BayRing also alleges several flaws in the UNE-P price squeeze analysis contained in Verizon's application.⁵²¹ In addition to these flaws, BayRing asserts that Verizon's analysis includes access revenues in the retail portion of the analysis but did not include these costs in the UNE-P column and has, therefore, double-counted the access revenues.⁵²² Finally, BayRing disputes Verizon's assumptions concerning the level of access and toll revenues used in the analysis and the inclusion of "other" revenues without accounting for the corresponding expenses.⁵²³ Because we do not rely on the price squeeze analysis contained in Verizon's application, we need not address the merits of these arguments.⁵²⁴

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New Hampshire Commission failed to implement the original conditions contained in the March 1 letter, BayRing maintains that a price squeeze remains in New Hampshire. We reject this argument. As a threshold matter, we find that the incidental comment by the New Hampshire Commission cited by BayRing is hardly the kind of detailed analysis necessary to establish a price squeeze. BayRing's appropriation of this statement does not make it any more persuasive of whether a price squeeze actually occurred, or otherwise mandate any particular outcome of our own, independent analysis in this regard. Moreover, although the conditions referenced in the original letter were later modified, the New Hampshire Commission agreed to a new set of conditions, which included specific rate reductions to loop rates, switching and transport rates, and DUF rates. *New Hampshire Commission June 14 Letter* at 3. While BayRing acknowledges that Verizon's UNE rates have decreased since the New Hampshire Commission's initial finding, it still maintains that these reductions "do very little to eliminate the price squeeze." BayRing Comments at 70. BayRing's argument again assumes that a price squeeze was clearly and reliably identified. Even if this was the case, as we have explained above, BayRing's case-in-chief regarding a price squeeze fails and its gainsaying of comments by the New Hampshire Commission is insufficient for us to modify our independent analysis in this respect.

⁵²¹ See BayRing Comments at 65-69. In particular, BayRing states that Verizon's analysis provides no relevant information concerning the margin available from the average residential customer because it is based upon the weighted average of the revenues Verizon derives from both business and residential customers. *Id.* at 65. BayRing states that Verizon did provide revenue data for an "illustrative residential customer" to the New Hampshire Commission in the state section 271 proceeding and uses this information to argue that the monthly costs of a residential UNE-P customer "far exceed" the revenue Verizon stated it obtains from this customer. *Id.* at 66. BayRing further contends that the Residential Local Service Package used in the analysis represents only a portion of Verizon's residential customers and that these customers generate more revenue per month than the average flat rate, unlimited service customer. *Id.* at 67. The Residential Local Service Package is a combination of flat, unlimited local calling, three features, and unlimited directory assistance. *Id.* BayRing argues that, in order to offer a service comparable to Verizon's Residential Local Service Package, it would need to incur additional costs, such as costs for providing unlimited directory assistance. *Id.* at 67-68.

⁵²² *Id.* at 68.

⁵²³ *Id.* at 69-69.

⁵²⁴ Verizon included this information in its application in anticipation of claims by competitive LECs that they are unable to earn of profit in New Hampshire under the current UNE rates. Verizon Hickey/Garzillo/Anglin NH Decl. 23, para. 65.

2. Delaware

152. AT&T and WorldCom allege that a price squeeze in the residential market in Delaware establishes a public interest violation.⁵²⁵ For many of the same reasons provided in our New Hampshire price squeeze analysis, we find that AT&T and WorldCom have failed to demonstrate a price squeeze in Delaware that dooms competitors to failure.⁵²⁶

153. First, we note that the Delaware Commission considered AT&T's price squeeze arguments in determining whether to recommend approval of Verizon's section 271 application, and squarely rejected them. The Delaware Commission stated that, "... Verizon-DE's UNE prices do not squeeze competitors by overcompensating Verizon-DE. Moreover, the evidence that [competitive] LECs have indeed entered the Delaware market shows that segments of the Delaware market are indeed open to economic entry through the acquisition of UNEs."⁵²⁷ AT&T and WorldCom present no new evidence here that would cause us to reach a different conclusion.

a. Revenue and Cost Assumptions

154. As stated in our New Hampshire price squeeze discussion, the key elements of a price squeeze analysis – input costs, revenues, and internal costs – depend on numerous variables. The parties here contest the validity of the variables used in each others' analyses, as well as the analyses themselves, and we find flaws in all of them. Therefore, we conclude that we cannot rely on the price squeeze analyses provided by AT&T and WorldCom, and that neither AT&T nor WorldCom has demonstrated a price squeeze in Delaware that dooms competitors to failure.⁵²⁸

155. First, WorldCom's analysis is flawed in that it reflects only one mode of entry, the UNE-Platform.⁵²⁹ We have rejected the AT&T and WorldCom contention that resale is not a viable competitive option because of insufficient margins, and found that it is appropriate to

⁵²⁵ AT&T Comments at 46, 50-51; AT&T Lieberman Decl. at 19-20, paras. 44-46; AT&T Reply at 16-17; AT&T Supplemental Comments at 3-5; AT&T Supplemental Lieberman Decl. at 1-2, para. 1, 8-10, paras. 15-21; WorldCom Comments at 3-4 and Attach. 1.

⁵²⁶ Consistent with our *Verizon Vermont Order*, 17 FCC Rcd at 7662-63, para. 67, and our *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9179, para. 285, we also reject AT&T's legal interpretation of the effect of *FPC v. Conway*, 426 U.S. 271 (1976), on our price squeeze analysis. AT&T Comments at 48-50.

⁵²⁷ Delaware Commission Comments at 12.

⁵²⁸ We do not address AT&T's criticisms of Verizon's price squeeze analysis, AT&T Lieberman Decl. at 20-23, paras. 47-53, because we do not rely on them in reaching our conclusion.

⁵²⁹ WorldCom Comments at 3-4 and Attach. 1.

consider the effect of resale in determining whether a price squeeze exists.⁵³⁰ We have also stated that consideration of resale is appropriate because a low margin may be the result of subsidized local residential rates.⁵³¹ Without considering resale, WorldCom's analysis is not complete. Second, WorldCom has failed to include in its revenue calculation additional revenue that we have stated must be included in a valid price squeeze analysis. Specifically, WorldCom does not include incremental intraLATA and interLATA toll revenues that would be generated by new customers, access revenues, or any analysis of its "ability . . . to leverage [its] presence in the long-distance or business markets . . . into an economically viable residential telephone service business."⁵³² For these reasons, we agree with Verizon's assessment that WorldCom has ignored the requirements for a complete price squeeze analysis outlined in our previous orders.⁵³³ We note, however, that even WorldCom's flawed analysis shows positive margins of \$4.48 in density zone one and \$1.42 in density zone two. According to Verizon, these two zones contain 85 percent of the access lines in Delaware, while according to AT&T, they contain 77 percent of Delaware access lines.⁵³⁴

156. AT&T has submitted a more detailed analysis which it assures us satisfies all the requirements of a complete price squeeze analysis established in our *Verizon Vermont Order*.⁵³⁵ AT&T's analysis includes intraLATA and interLATA toll revenues and access revenues, and provides margin estimates that account for the availability of resale.⁵³⁶ AT&T's analysis, however, fails to include potential revenue from services other than traditional voice services, even though UNEs provide competitive LECs the ability to offer additional services. AT&T has indicated in another proceeding that it is providing residential DSL service using the UNE-Platform, and we envision that AT&T may well begin providing such service in Delaware if it is not already doing so.⁵³⁷ AT&T's failure to include such revenues is one reason the Delaware

⁵³⁰ *Verizon Vermont Order*, 17 FCC Rcd at 7664, para. 69; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9180, para. 287.

⁵³¹ *Verizon Vermont Order*, 17 FCC Rcd at 7663-64, paras. 68-69; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9180, para. 287; *BellSouth Multistate Order* at para. 290.

⁵³² *Verizon Vermont Order*, 17 FCC Rcd at 7664, para. 71. See also *BellSouth MultiState Order* at para. 288.

⁵³³ Verizon Reply at 42-43.

⁵³⁴ Verizon Reply at 44; AT&T Lieberman Decl. at Exh. A.

⁵³⁵ AT&T Comments at 50; AT&T Lieberman Decl. at 11, para. 23.

⁵³⁶ AT&T Lieberman Decl. at Exh. B (confidential) and Exh. A (redacted). AT&T states that its analysis does not include an allowance for a subscriber line charge because universal service support is not available in Delaware. AT&T Lieberman Decl. at 18, para. 37.

⁵³⁷ Verizon Reply at 45, citing Comments of AT&T Corp., CC Docket Nos. 01-338, 96-98, and 98-147, at iv (filed April 5, 2002) ("AT&T is now offering residential customers . . . a combined package of voice and DSL-based services using UNE-P.")

Commission rejected its price squeeze claims. As the Delaware Hearing Examiner who first evaluated these claims stated:

Here, the record does not support a finding that Delaware's UNE rates create a price squeeze. AT&T's evidence and analysis of profit margins fail to consider a number of revenue sources that could be derived from the acquisition of network elements leased from Verizon-DE. Whether those revenues may be for services other than regulated telecommunications services is irrelevant. All revenues that accrue from the use of facilities, whether regulated or not and whether competitive or not, must be considered in a proper analysis of the ability to recover the costs of those facilities. Moreover, it is inherently flawed to analyze only particular market segments, especially where the prices chargeable in those segments are fixed in whole or in substantial part by regulatory action.

The Delaware Commission reached the same conclusion.⁵³⁸ For these same reasons, we find AT&T's price squeeze analysis flawed.

157. Both AT&T and WorldCom assert that, to enter the local market in Delaware, they must achieve margins greater than their internal costs, which are more than \$10 per-line, per-month.⁵³⁹ As we have stated in previous section 271 orders, we are not concerned with a "sufficient" profit margin for AT&T or WorldCom, but a sufficient profit for an efficient competitor.⁵⁴⁰ Therefore, we are not convinced by AT&T and WorldCom claims that their potential margins must exceed their internal costs of more than \$10.00 per line, per month for them to enter the Delaware local market. The Delaware Commission also was not convinced that an efficient competitor's reasonable internal costs would be so high when it set a 20 percent resale discount.⁵⁴¹ Our experience from previous section 271 proceedings shows that competitive LECs may be able to enter the local telephone market even where they allege that the available margins are less than \$10. For example, WorldCom is offering its "Neighborhood" local service package in Oklahoma, Kansas, Massachusetts, Missouri, Arkansas, Georgia, Louisiana, Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, all states where

⁵³⁸ Delaware Commission Comments at 12.

⁵³⁹ AT&T Comments at 57; AT&T Lieberman Decl. at 20, para. 45; WorldCom Comments at 4. AT&T provides an exact figure for its Delaware per-line, per-month internal costs only in the confidential version of its comments. See AT&T Comments, Tab B, Declaration of Steven Bickley on Behalf of AT&T Corp. at paras. 1-2 (confidential) (AT&T Bickley Decl.).

⁵⁴⁰ *Verizon Vermont Order*, 17 FCC Rcd at 7664, para. 70; *Verizon New Jersey Order*, 17 FCC Rcd at 12360-61, para. 172.

⁵⁴¹ *Verizon Martin/Garzillo/Sanford Reply Decl.* at 41-42, para. 84. The 20 percent resale discount applies to lines not using Verizon Operator Services or Directory Assistance. *Id.*

commenters alleged a price squeeze that would preclude entry into the local market.⁵⁴² Furthermore, WorldCom's own data, filed in a previous 271 proceeding, show that it has decided to enter markets where it will achieve a "minimally acceptable" UNE-Platform margin that is substantially lower than \$10, and falls between \$5 and \$7.⁵⁴³ These entry decisions cast further doubt on the AT&T and WorldCom estimates of their own internal costs, and their analyses of the potential margins that are available in Delaware.⁵⁴⁴

b. Delaware Margin Analysis

158. Even with these flaws, AT&T's analysis shows positive margins for 100 percent of Delaware access lines. While resale does not change AT&T's reported margin for density zone one, which, according to AT&T, contains 56 percent of Delaware access lines, and, according to Verizon, contains 59 percent of Delaware access lines, it dramatically increases AT&T's potential margins in density zones two and three, resulting in positive margins in all three density zones.⁵⁴⁵ When AT&T also accounts for intraLATA and interLATA toll revenue, which it reports only in the confidential version of its analysis, AT&T's potential margins increase by a similarly significant amount.⁵⁴⁶ AT&T's analysis showing the effect of Verizon's 31 percent switching rate reduction on August 30, 2002, which is also confidential, demonstrates an even greater improvement in its margin in density zone one, containing nearly 60 percent of the access lines in the state.⁵⁴⁷ The rate reduction produces a state-wide average margin significantly higher than the state-wide average margins that we found failed to doom competitors to failure in the Vermont, Georgia/Louisiana, New Jersey, Alabama, Kentucky, Mississippi, North Carolina, and South Carolina section 271 proceedings.⁵⁴⁸ Verizon's reduced

⁵⁴² See WorldCom <http://www.theneighborhood.com/res_local_service/jsps/default.jsp> last visited Sept. 24, 2002).

⁵⁴³ See *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region InterLATA Services in Massachusetts*, Letter from Keith L. Seat, Senior Counsel, Federal Law and Public Policy, WorldCom to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-176 at 2-4 (filed Nov. 30, 2000).

⁵⁴⁴ We also doubt AT&T's claim that, "The costs and administrative difficulties of UNE-loop entry make it economically infeasible for new entrants pursuing typical residential customers." AT&T Supplemental Comments at 5. Cavalier is serving the local market in Delaware exclusively through use of the UNE-loop. Cavalier Comments at 1.

⁵⁴⁵ AT&T Lieberman Decl. at Exh. A.

⁵⁴⁶ AT&T Lieberman Decl. at Exh. B (confidential).

⁵⁴⁷ AT&T Lieberman Supplemental Decl. at Exh. A (confidential).

⁵⁴⁸ AT&T Lieberman Supplemental Decl. at Exh. A (confidential). See also *Verizon New Jersey Order*, 17 FCC Rcd at 12360-61, para. 172; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9179-80, para. 286; *BellSouth Multistate Order* at paras. 283, 286.

switching rates also provide AT&T a margin in the most favorable zone that approaches the projected margin in the most favorable New Jersey zone.⁵⁴⁹ If AT&T's analysis were further corrected for its failure to include revenues from services other than traditional voice services, AT&T's margins would be even greater.

159. We also reject AT&T's most recent claim that, even with Verizon's reduced switching rates, Verizon's NRCs contribute to a price squeeze in Delaware.⁵⁵⁰ AT&T's comparison of Delaware and New York amortized NRCs, which AT&T uses to claim that Delaware NRCs are 540 percent higher than New York NRCs, is not a direct comparison.⁵⁵¹ AT&T's Delaware charge for a "new installation" includes dispatch of a Verizon technician to physically connect cable in the field, while AT&T's New York "new installation" charge includes only central office service order processing without the far more costly field dispatch of a technician. If field dispatch charges are included in the New York new installation charge, it increases from the \$10.76 in AT&T's comparison to \$124.73. Further, while AT&T's analysis assumes that field dispatches will occur in 100 percent of Delaware new installations, Verizon submitted evidence indicating that such field dispatches actually occur for only 50 to 60 percent of new installations in Delaware.⁵⁵² Thus we conclude that Verizon's Delaware NRCs do not contribute to a price squeeze in Delaware. We further conclude that AT&T and WorldCom can achieve significant, positive margins for the vast majority of Delaware access lines, and likely could achieve positive margins throughout the state. Such margins do not demonstrate a price squeeze that dooms competitors to failure.⁵⁵³

160. The state of competition in Delaware further refutes AT&T and WorldCom price squeeze claims. According to the Delaware Commission and the Department of Justice, competitive LECs serve 6.7 percent of the total local exchange market in Delaware, or roughly 49,000 out of 636,000 lines.⁵⁵⁴ AT&T, Cavalier, CoreCom, Pae Tel and XO Communications provide facilities-based local service in Delaware in addition to 15 resellers.⁵⁵⁵ According to the

⁵⁴⁹ AT&T Lieberman Supplemental Decl. at Exh. A (confidential). See also *Verizon New Jersey Order*, 17 FCC Rcd at 12360-61, para. 172.

⁵⁵⁰ AT&T Supplemental Comments at 4; AT&T Lieberman Supplemental Decl. at 10, para. 20.

⁵⁵¹ AT&T Supplemental Comments at 4; AT&T Lieberman Supplemental Decl. at Exh. B.

⁵⁵² Letter from Richard T. Ellis, Director, Federal Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-157 (filed Sept. 11, 2002).

⁵⁵³ *Verizon Vermont Order*, 17 FCC Rcd at 7763-64; paras. 68-69, *Verizon New Jersey Order*, 17 FCC Rcd at 12360-61, paras. 171-72.

⁵⁵⁴ Delaware Commission Comments at 5; Department of Justice Evaluation at 5.

⁵⁵⁵ Department of Justice Evaluation at 6. AT&T's own data demonstrate that, contrary to its assertions, AT&T Comments at 44, competitive LECs in Delaware, particularly Cavalier and AT&T itself, are financially viable. See AT&T Comments at Attach. 1.

Department of Justice, competitive LECs serve approximately 1.9 percent of all residential lines in Delaware using their own facilities, and approximately 1.2 percent of all residential lines through resale or the UNE-Platform.⁵⁵⁶ As we discuss, our own analysis of competition in Delaware shows that the total number of lines in Delaware served by competitive LECs is proportionately greater than the number of lines served by competitive LECs in New York, and greater than the number of lines served by competitive LECs in Vermont and New Jersey at the time we approved Verizon's section 271 applications for those states.

161. Finally, in weighing any price squeeze allegation, we must consider whether lower amounts of residential competition are the result of a state commission policy to keep residential rates affordable in high cost areas.⁵⁵⁷ Specifically, it is possible that a lack of profitability in entering the residential market may be the result of subsidized local residential rates in one or more zones, and not the fact that UNE rates are at an inappropriate point in the TELRIC range.⁵⁵⁸ In Delaware, for example, the clear cost difference between density zone one, where AT&T reports its greatest margin, and density zone three, where it reports the most negative margin without considering resale, is the difference in the rates Verizon charges for the loop.⁵⁵⁹ It may be that until states rebalance residential rates, or make high cost subsidies explicit and portable, the UNE-Platform may not provide a viable means of entry for certain areas in some states. That fact, however, needs to be weighed against competing public policy interests, such as ensuring availability and affordability of local telephone services in rural areas and the benefit to consumers from the BOC's entry into the interLATA market. Given the complex and competing public policy interests at stake, we do not think that we can conclude that the existence of subsidies in rural areas in itself is a circumstance that requires a finding that section 271 authorization would not be in the public interest.

162. Based on these facts, we conclude that AT&T and WorldCom fail to demonstrate a price squeeze that dooms competitors in Delaware to failure, or that granting Verizon's Delaware application would not be in the public interest.

B. Premature Marketing

163. Finally, we note that during the pendency of its New Jersey application, Verizon voluntarily disclosed that it sent direct mail and bill insert advertising to New Jersey

⁵⁵⁶ Department of Justice Evaluation at 6.

⁵⁵⁷ *Verizon Vermont Order* 17 FCC Rcd at 7663-64, paras. 68-69; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9179-80, para. 286; *BellSouth Multistate Order* at para. 290.

⁵⁵⁸ *Verizon Vermont Order* 17 FCC Rcd at 7663-64, paras. 68-69; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9179-80, para. 286; *BellSouth Multistate Order* at para. 290.

⁵⁵⁹ AT&T Lieberman Decl. at Exh. B (confidential).

customers.⁵⁶⁰ While reviewing its long distance marketing programs in connection with the New Jersey incidents, the company discovered that Verizon representatives had prematurely marketed services in New Hampshire and Delaware by mailing “winback letters” to certain customers.⁵⁶¹ Verizon also discovered that certain calling card calls were incorrectly branded as Verizon calls and that service representatives incorrectly solicited and accepted customer orders for long distance service.

a. Winback Letters

164. Verizon recently reported that it mailed “winback” letters to 1,500 customers in New Hampshire and 950 customers in Delaware, mentioning long distance but omitting the standard Verizon disclaimer that long distance service is not yet available in those states.⁵⁶² According to Verizon, none of the customers that received the letters in New Hampshire and Delaware received long distance service as a result of the letters. Verizon claims that it has “implemented additional controls that are designed to prevent mistakes, as well as to detect and correct any that do occur . . . and are intended to ensure that long distance offers are not sent to customers in non-section 271 authorized states and that multistate/multi-product mailings that include mention of long distance contain appropriate disclaimers.”⁵⁶³

⁵⁶⁰ See *Verizon New Jersey Order*, 17 FCC Rcd 12275, 12367-68, at paras. 188-190. See also Letter from Marie T. Breslin, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-157 (filed Aug. 12, 2002) (Verizon Aug. 12 Marketing *Ex Parte* Letter).

⁵⁶¹ Verizon Aug. 12 Marketing *Ex Parte* Letter at 1.

⁵⁶² See Verizon Aug. 12 Marketing *Ex Parte* Letter. See also Letter from Richard T. Ellis, Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-157, (filed Sept. 18, 2002) (Verizon Sept. 18 Marketing *Ex Parte* Letter). Verizon claims the letters were part of a multi-jurisdictional marketing effort that targeted small business customers in several Verizon states, including New Hampshire and Delaware. Verizon claims the principal focus of the mailings was to market Verizon’s local services, even though the letters mentioned Verizon long distance, as well as voice and data products.

⁵⁶³ Verizon describes four remedial measures it has put into place to prevent premature direct mail marketing of long distance in the future: (1) to prevent direct mail marketing of long distance service before Verizon receives section 271 authority, Verizon claims it will no longer print or distribute direct mail referring to long distance service for any state until *after* it receives section 271 authority; (2) according to Verizon, the company has hired separate vendors to handle mail for section 271 approved states, and for states where Verizon does not have section 271 approval; (3) Verizon claims that a Verizon official “at the director level of management” must now formally check and approve all direct mail long distance advertising for accurate long distance service availability information; and (4) Verizon claims it has implemented a “three point check on all addresses used in long distance campaigns.” This three point checklist includes: (i) Verizon and its suppliers have removed addressees from unauthorized states from the direct mail address lists; (ii) Verizon and its suppliers now verify that the number of mail pieces actually deposited for delivery matches the intended number of mailings; and (iii) direct mail now is sent only to persons whose billing and service addresses are verified as being in the same section 271 authorized state. Verizon Sept. 18 Marketing *Ex Parte* Letter at 2.

b. Calling Card Calls

165. Verizon also reported that as part of its overall review of its marketing programs, it discovered that in June 2000, approximately 2,500 calling card calls, originating in various non-section 271 authorized states, have been misbranded as Verizon calls. Verizon claims that approximately 150 of these calling card calls originated in Delaware and approximately 100 of them originated in New Hampshire. Verizon claims it did not bill customers for any of these calls.⁵⁶⁴

c. Telemarketing Sales

166. Verizon also reported that, while reviewing its long distance marketing programs in connection with the New Jersey incidents, the company discovered that its representatives accepted orders from customers in New Hampshire and Delaware.⁵⁶⁵ In New Hampshire, between February and June 2002, Verizon sales representatives accepted approximately 45 sales orders. Verizon claims that most of these instances occurred while conducting operational readiness tests on the Verizon systems to assess the operations of the long distance network and billing systems in the state.⁵⁶⁶ According to Verizon, the company loaded its Carrier Identification Codes into the sales ordering system and Verizon local exchange carrier switches to permit test calls to be made from various Verizon locations. Verizon also claims that despite instructions not to accept long distance orders during the test period in non-section 271 approved states, some telemarketing sales representatives mistakenly changed customers' PICs to Verizon Long Distance and submitted the orders. Verizon claims that although the customers' PICs were temporarily changed to Verizon in the local switch, no interLATA service was provided because Verizon's long distance network will permit only test calls that originate from specifically identified test telephone numbers to travel on the network.⁵⁶⁷ However Verizon notes that in

⁵⁶⁴ According to Verizon, the calling card calls were mistakenly branded by WorldCom. As Verizon explains, in states where it does not have section 271 approval, calling card service is provided through a teaming arrangement with an unaffiliated carrier known as USAN. Calls originating from non-section 271 approved Verizon states are branded as USAN calls and carried by WorldCom on behalf of USAN, under separate arrangements between those companies. However, Verizon claims that "a limited number of long distance calling card calls were routed to the Verizon portion of the platform and were incorrectly branded as 'Verizon' instead of 'USAN.'" Verizon also states that, although WorldCom billed Verizon for these calls, Verizon did not charge the customers for calls that originated from non-section 271 authorized states. Verizon also states that it "has implemented additional controls relating to long distance calling card calls" to prevent such future occurrences. Specifically, Verizon claims it now blocks any long distance calling card calls that originate in non-section 271 authorized states that should not, but do, reach the Verizon portion of the platform so that the call cannot complete over the WorldCom facilities that Verizon resells.

⁵⁶⁵ Verizon Sept. 18 Marketing *Ex Parte* Letter at 3.

⁵⁶⁶ *Id.*

⁵⁶⁷ Verizon states that none of these customers were provided service because the mistaken orders were detected and corrected by Verizon's provisioning controls. During the test period, Verizon ran a daily scan of its order (continued....)

June 2002, it implemented additional edits to its consumer order entry system to detect non-test orders in non-section 271 authorized states. Moreover, by the end of September 2002, the company will implement an additional edit that will prevent any representative who is not specifically participating in Operational Readiness Testing from inputting orders during testing periods.⁵⁶⁸

167. Verizon further states that service representatives accepted orders on a few other occasions in New Hampshire and Delaware.⁵⁶⁹ Verizon claims that “none of these orders were “provisioned,” and that the company has “significant controls” in place to minimize these incidents, which it characterizes as “human errors.”⁵⁷⁰ Verizon states that LEC sales representatives (who sell long distance services to customers who call the Verizon service center) were instructed on long distance launch dates and regularly monitored to make certain that they offered only those products permitted in a particular state. Verizon also claims that third-party telemarketers received “significant oversight.”⁵⁷¹ Verizon further states that it has reissued service alerts and improved training to internal sales representatives reemphasizing that Verizon is authorized to provide long distance only in certain states. Moreover, in June 2002, Verizon “temporarily stopped all outbound telemarketing by vendors in the former Bell Atlantic states until Verizon could complete a review of each of its telemarketing vendors to ensure that their practices were consistent with Verizon policies.”⁵⁷² Vendors were not authorized to resume telemarketing calls until they successfully completed this review process.

d. Discussion

168. As we noted in the *Verizon New Jersey Order*, potential violations of federal telecommunications law could be relevant to the section 271 inquiry.⁵⁷³ In that order, we (Continued from previous page) _____

processing system to detect any non-test orders that might be incorrectly submitted. Any non-test order was cancelled, the customer was notified, and his or her PIC was restored to the original carrier. *Id.* at 4.

⁵⁶⁸ *Id.* at 4. Between January 1, 2001 and June 30, 2002, sales representatives accepted approximately four orders for toll-free numbers that terminated in Delaware and approximately thirteen orders for toll-free numbers that terminated in New Hampshire. From February to July 2002, sales representatives accepted approximately 5 orders from business customers. In May and June 2002, Verizon sales representatives accepted orders from six customers for long distance service in Delaware. Verizon states that it has taken steps to modify its service order processor to reject any order for a telephone number that corresponds to a non-section 271 authorized state, including Delaware. A sales representative quoted a price to a customer who called inquiring about long distance service in Delaware. Verizon claims that the sales representative’s supervisor identified the error on the same day, notified the sales representative immediately, and informed the customer of the error.

⁵⁶⁹ *Id.* at 4-5.

⁵⁷⁰ *Id.* at 4.

⁵⁷¹ *Id.* at 5.

⁵⁷² *Id.*

⁵⁷³ See *Verizon New Jersey Order*, 17 FCC Rcd at 12368, para. 190.

examined evidence of premature marketing to more than a half-million customers, resulting from conduct that occurred at approximately the same time as the conduct disclosed in this proceeding. Moreover, in the *Verizon New Jersey Order*, and under the circumstances of that case, we concluded that we would not deny or delay the application under the public interest standard.⁵⁷⁴ Similarly, we take no position in this proceeding on whether Verizon's actions violate section 272(g)(2) of the Act.⁵⁷⁵ Instead, we defer any enforcement action pending the outcome of the Enforcement Bureau's investigation of this matter. Regardless of what enforcement action we may take in the future, we remind Verizon and all BOCs that they should not market long distance service in an in-region state prior to receiving section 271 approval from the Commission for that particular state. Further, because this problem appears to have arisen with disturbing frequency in recent months,⁵⁷⁶ we find it necessary to emphasize, once again, that carriers must exercise extreme caution. We have not yet found that premature marketing would warrant rejection of an application under the public interest standard, under the circumstances of specific cases so far, but could and may do so.

C. Assurance of Future Compliance

169. As set forth below, we find that the Performance Assurance Plans (PAPs) currently in place in New Hampshire and Delaware will provide assurance that the local market will remain open after Verizon receives section 271 authorization.⁵⁷⁷ We have examined certain key aspects of each PAP and we find that the plans are likely to provide incentives that are sufficient to foster post-entry checklist compliance. The New Hampshire and Delaware Commissions each adopted a self-executing PAP, modeled on the PAPs adopted in New York, Massachusetts, and Connecticut.⁵⁷⁸ The New Hampshire PAP uses the same general standards and measures set forth in the New York Carrier to Carrier guidelines.⁵⁷⁹ Both the New

⁵⁷⁴ *Verizon New Jersey Order*, 17 FCC Rcd at 12368, para. 190.

⁵⁷⁵ *Verizon New Jersey Order* 17 FCC Rcd at 12367, para. 189.

⁵⁷⁶ See *Verizon New Jersey Order* 17 FCC Rcd at 12367, para. 189; *BellSouth Alabama, Kentucky, Mississippi, North Carolina, and South Carolina Order*, at paras. 297-299.

⁵⁷⁷ *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98. In all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long distance market.

⁵⁷⁸ Verizon Application at 126-128; see Joint Declaration of Elaine M Guerard, Julie A. Canny, Beth A. Abesamis, and Marilyn C. DeVito (Performance Measurements – New Hampshire and Delaware) at paras. 105, 130, 132, and 140. (Guerard et al. Joint Declaration).

⁵⁷⁹ See Guerard et al. Joint Decl. at paras. 16-18. The Delaware Commission “has approved the use of the New York Guidelines in Delaware, and in July 2002 Verizon expects to begin reporting its performance under a set of measurements that are essentially identical to those in place in New York, Massachusetts, and New Hampshire.” (cite para. in Guerard et al.)

Hampshire and Delaware PAPs expose Verizon to the same level of liability as the Massachusetts PAP.⁵⁸⁰

170. The Delaware plan differs only minimally from the New Hampshire plan.⁵⁸¹ The primary distinction involves the metric associated with flow-through of UNE orders. The Delaware benchmarks for this metric will be implemented over the course of one year; the New Hampshire flow-through benchmarks will be implemented over a shorter period.⁵⁸² In addition, the New Hampshire Commission has required Verizon to develop a rapid response process to resolve disagreements among carriers.⁵⁸³

171. As in prior section 271 orders, our conclusions are based on a review of several key elements in the PAP: total liability at risk; the definitions of the performance measurements and standards; the structure of the plan; the self-executing nature of remedies in the plan; the plan's data validation and audit procedures; and the plan's accounting requirements.⁵⁸⁴ We find generally that the Delaware and New Hampshire PAPs satisfy our analysis in each of these key elements. Both the Delaware and New Hampshire plans were developed in open proceedings with participation by all sections of the industry and that concerns raised by commenters in those proceedings were considered by the Delaware and New Hampshire Commissions.⁵⁸⁵ Based on the record in each state, the Delaware and New Hampshire Commissions each approved the PAPs.⁵⁸⁶ We find that these PAPs, together with our section 271(b)(6) authority and the continuing oversight of the respective state commissions, provide reasonable assurance that the local market will remain open after 271 authority is granted. No commenter has raised any issues relating to the PAP in the record before us.

VII. SECTION 271(D)(6) ENFORCEMENT AUTHORITY

172. Section 271(d)(6) of the Act requires Verizon to continue to satisfy the "conditions required for ... approval" of its section 271 application after the Commission

⁵⁸⁰ Guerard et al. Joint Decl. at paras. 100, 132. The New Hampshire Commission required that Verizon increase the total amount at risk to bring it into alignment with the 39-percent-of-net-return liability exposure in neighboring states. *Id.*, para. 100.

⁵⁸¹ Guerard et al. Joint Decl. at para. 132.

⁵⁸² Guerard et al. Joint Decl. at paras. 53, 135.

⁵⁸³ Guerard et al. Joint Decl. at para. 131; *Opinion Letter Regarding Verizon NH's Compliance with the Requirements of Section 271 of the Federal telecommunications Act of 1996* at 3 (App. B-NH, Tab 24).

⁵⁸⁴ See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9121-25, paras. 240-49; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6377-81, paras. 273-80.

⁵⁸⁵ See Verizon Application at 122-23.

⁵⁸⁶ New Hampshire Commission Comments 18-20; Delaware Commission Comments at 4-5.

approves its application.⁵⁸⁷ Thus, the Commission has a responsibility not only to ensure that Verizon is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.⁵⁸⁸

173. Working in concert with the New Hampshire and Delaware Commissions, we intend to monitor closely Verizon's post-approval compliance for New Hampshire and Delaware to ensure that Verizon does not "cease[] to meet any of the conditions required for [section 271] approval."⁵⁸⁹ We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in New Hampshire and Delaware. We are prepared to use our authority under section 271(d)(6) if evidence shows market opening conditions have not been maintained.

174. We require Verizon to report to the Commission all New Hampshire and Delaware carrier-to-carrier performance metric results and Performance Assurance Plans monthly reports beginning with the first full month after the effective date of this Order, and for each month thereafter for one year unless extended by the Commission. These results and reports will allow us to review, on an ongoing basis, Verizon's performance to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Verizon's entry into the New Hampshire and Delaware long distance markets.⁵⁹⁰

VIII. CONCLUSION

175. For the reasons discussed above, we grant Verizon's application for authorization under section 271 of the Act to provide in-region, interLATA services in the states of New Hampshire and Delaware.

IX. ORDERING CLAUSES

176. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, Verizon's joint

⁵⁸⁷ 47 U.S.C. § 271(d)(6).

⁵⁸⁸ See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53.

⁵⁸⁹ 47 U.S.C. § 271(d)(6)(A).

⁵⁹⁰ See, e.g., *Bell Atlantic-New York Order*, 15 FCC Rcd at 5413-23, paras. 1-25 (2000) (adopting consent decree between the Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of \$3,000,000 to the United States Treasury, with additional payments if Bell Atlantic failed to meet specific performance standards and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).

application to provide in-region, interLATA services in the states of New Hampshire and Delaware, filed on June 27, 2002, IS GRANTED.

177. IT IS FURTHER ORDERED that Verizon's motion to the Commission to waive the page limit for Verizon's joint application to provide in-region, interLATA service in the states of New Hampshire and Delaware IS GRANTED.

178. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE October 4, 2002.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Marlene H. Dortch", is written over the printed name.

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

**Verizon New England Inc., et al., Section 271 Application to Provide-In-Region InterLATA
Service in New Hampshire and Delaware**

CC Docket No. 02-157

Comments

Commenters:

Alliance for Public Technology ("APT")
AT&T Corp.
Cavalier Telephone Mid-Atlantic, L.L.C.
Freedom Ring Communications, L.L.C. d/b/a BayRing Communications
Sprint Communications Company L.P.
Telecommunications Research & Action Center ("TRAC")
WorldCom, Inc.

Reply Comments

Commenters:

AT&T Corp.
The Destek Group, Inc.
Freedom Ring Communications, L.L.C. d/b/a BayRing Communications